

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 ORACLE USA, INC., a Colorado :  
5 corporation; ORACLE AMERICA, :  
6 INC., a Delaware corporation; :  
7 and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL  
8 CORPORATION, a California :  
9 corporation, :  
10 Plaintiffs, :  
11 vs. :  
12 RIMINI STREET, INC., a Nevada :  
13 corporation; and SETH RAVIN, :  
14 an individual, :  
15 Defendants. :  
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17 TRANSCRIPT OF JURY TRIAL - DAY 2  
18 (Pages 41 through 263)

19 September 15, 2015

20 Las Vegas, Nevada

21  
22 Court Reporter: Donna Davidson, RDR, CRR, CCR 318  
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1 LAS VEGAS, NEVADA, SEPTEMBER 15, 2015, 8:04 A.M.

2 --oOo--

3 P R O C E E D I N G S

4  
5 (Jurors enter courtroom at 8:04 a.m.)

6 THE COURT: Good morning. Have a seat, please.

7 I appreciate everyone's timeliness this morning.  
8 And we're running a few minutes late but everyone's here,  
9 and I appreciate that.

10 We'll start out with some preliminary  
11 instructions which will just give you some guidelines on  
12 how you should consider and approach evidence in the case  
13 and a little bit of information concerning procedure that  
14 we follow.

15 So I'm just going to read these to you, ladies  
16 and gentlemen. And if there ever was a point in time when  
17 you might want to have them read again to you, you can just  
18 send a note out through the court clerk, Dionna, and I  
19 would read one or all of them to you again if you felt that  
20 was needed.

21 I say that -- I usually don't do that in most  
22 trials because most trials are much shorter than this one,  
23 so it could be that -- with the amount of time we'll be  
24 taking, that you might have some concern and want a  
25 reminder of what was said when we started.

1           So, in any event, ladies and gentlemen, you are  
2 now the jury in this case. It is my duty to instruct you  
3 on the law.

4           These instructions are preliminary instructions  
5 to help you understand the principles that apply to civil  
6 trials and to help you understand the evidence as you  
7 listen to it. At the end of the trial, I will give you a  
8 final set of instructions. It is the final set of  
9 instructions which will govern your deliberations.

10           You must not infer from these instructions or  
11 from anything I may say or do as indicating that I have an  
12 opinion regarding the evidence or what your verdict should  
13 be.

14           It is your duty to find the facts from all the  
15 evidence in the case. To those facts you will apply the  
16 law as I give it to you.

17           You must follow the law as I give it to you,  
18 whether you agree with it or not, and you must not be  
19 influenced by any personal likes or dislikes, opinions,  
20 prejudices, or sympathy. That means that you must decide  
21 the case solely on the evidence before you. You will  
22 recall that you took an oath to do so yesterday afternoon.

23           In following my instructions, you must follow  
24 all of them and not single out some and ignore others.  
25 They are all important.

1           This is a civil case. The plaintiff has the  
2           burden of proving its case by what is called the  
3           preponderance of the evidence. That means the plaintiff  
4           has to produce evidence which, considered in the light of  
5           all the facts, leads you to believe that what the plaintiff  
6           claims is more likely true than not.

7           To put it differently, if you were to put the  
8           plaintiffs' and the defendants' evidence on opposite sides  
9           of the scales, the plaintiff would have to make the scales  
10          tip somewhat on its side. If the plaintiff fails to meet  
11          this burden, the verdict must be for the defendant.

12          Those of you who have sat on criminal cases will  
13          have heard proof beyond a reasonable doubt. That  
14          requirement does not apply to a civil case, therefore you  
15          should put it out of your mind.

16          The evidence you are to consider in deciding  
17          what the facts are consists of the sworn testimony of any  
18          witness, the exhibits which are received into evidence, and  
19          any facts to which the lawyers have agreed.

20          Evidence may be direct or circumstantial.  
21          Direct evidence is direct proof of a fact such as testimony  
22          by a witness about what that witness personally saw or  
23          heard or did. Circumstantial evidence is proof of one or  
24          more facts from which you could find another fact. You  
25          should consider both kinds of evidence.

1           The law makes no distinction between the weight  
2           to be given to either direct or circumstantial evidence.  
3           It is for you to decide how much weight to give to any  
4           evidence.

5           In deciding the facts of this case, you may have  
6           to decide which testimony to believe and which testimony  
7           not to believe. You may believe everything a witness says,  
8           or part of it, or none of it.

9           In considering the testimony of any witness, you  
10          may take into account:

11                 One, the opportunity and ability of the witness  
12                 to see or hear or know the things testified to;

13                 Two, the witness's memory;

14                 Three, the witness's manner while testifying;

15                 Four, the witness's interest in the outcome of  
16                 the case and any bias or prejudice;

17                 Five, whether other evidence contradicted the  
18                 witness's testimony;

19                 Six, the reasonableness of the witness's  
20                 testimony in light of all the evidence; and

21                 Seven, any other factors that bear on  
22                 believability.

23           The weight of the evidence as to a fact does not  
24           necessarily depend on the number of witnesses who testify.

25           During the course of trial, testimony may also

1 be read to you from depositions or perhaps played for you  
2 from videotapes of depositions. A deposition is testimony  
3 taken under oath before trial and preserved in writing or,  
4 in some cases, on videotape. Unless I instruct you  
5 otherwise, you may consider deposition testimony as if it  
6 had been given here in open court by the witness.

7 Deposition testimony is typically given when a  
8 witness is unavailable by subpoena to the courtroom.

9 Some witnesses, because of education or  
10 experience, are permitted to state opinions and the reasons  
11 for those opinions.

12 Opinion testimony should be judged just like any  
13 other testimony. You may accept it or reject it, and give  
14 it as much weight as you think it deserves considering the  
15 witness's education and experience, the reasons given for  
16 the opinion, and all the other evidence in the case.

17 Some evidence may be admitted for a limited  
18 purpose only. When I instruct you that an item of evidence  
19 has been admitted for a limited purpose, you must consider  
20 it only for that limited purpose and for no others.

21 In reaching your verdict at the end of this  
22 case, you may consider only the testimony and exhibits  
23 received into evidence. Certain things are not evidence  
24 and you may not consider them in deciding what the facts  
25 are. I will list them for you.



1           One, arguments and statements by the attorneys  
2 are not evidence. The lawyers are not witnesses. What  
3 they have said in their opening statements, will say in  
4 their closing arguments and at other times, is intended to  
5 help you interpret the evidence, but it is not evidence.  
6 If the facts as you remember them differ from the way the  
7 lawyers have stated them, your memory of the facts  
8 controls.

9           Two, questions and objections by lawyers are not  
10 evidence. Attorneys have a duty to their clients to object  
11 when they believe a question is improper under the rules of  
12 evidence, but you should not be influenced by the objection  
13 or by the Court's ruling on it.

14           Three, testimony that has been excluded or  
15 stricken or that you have been instructed to disregard is  
16 not evidence and must not be considered. In addition,  
17 sometimes testimony and exhibits are received only for a  
18 limited purpose. When I have given a limiting instruction,  
19 you must follow it.

20           Four, anything you have seen or heard when the  
21 Court is not in session is not evidence. You are to decide  
22 the case solely on the evidence received at the trial.

23           Five, any notes taken by you or other jurors are  
24 not evidence.

25           There are rules of evidence that control what

1 can be received into evidence. When a lawyer asks a  
2 question or offers an exhibit into evidence and a lawyer on  
3 the other side thinks that it is not permitted by the rules  
4 of evidence, that lawyer may object. If I overrule the  
5 objection, the question may be answered or the exhibit  
6 received. If I sustain the objection, the question cannot  
7 be answered and the exhibit is not received.

8 Whenever I sustain an objection to a question,  
9 you must ignore the question and must not guess what the  
10 answer might have been.

11 Sometimes I may order that evidence be stricken  
12 from the record and that you disregard or ignore it. That  
13 means that when you are deciding the case, you must not  
14 consider the evidence that was stricken.

15 You should pay close attention to the testimony  
16 and all evidence as it is presented because it will be  
17 necessary to rely upon your collective memories concerning  
18 what the testimony was when you retire to deliberate on a  
19 verdict.

20 Although, as you can see, a court reporter is  
21 recording everything that is said during the trial,  
22 typewritten transcripts cannot be prepared for your use  
23 during deliberations and you should not expect to receive  
24 them.

25 On the other hand, all exhibits admitted into

1 evidence during the trial will be available to you for your  
2 study during your deliberations. So, if an exhibit is  
3 received in evidence but is not fully read or shown to you  
4 at the time, do not be concerned because you will be able  
5 to see the exhibit later during your jury deliberations.

6 If you wish, you may take notes to help you  
7 remember what witnesses said. If you do take notes, please  
8 keep them to yourself until you and your fellow jurors go  
9 to the jury room to decide the case.

10 Do not let note taking distract you so that you  
11 do not hear other answers by witnesses.

12 When you leave, your notes should be left in the  
13 jury room. They will be protected there and will be  
14 available when you return to the jury room.

15 Whether or not you take notes, you should rely  
16 on your own memory of what was said. Notes are only to  
17 assist your memory. You should not be overly influenced by  
18 your notes. Your notes and any other juror's notes are not  
19 evidence.

20 The parties have agreed to certain facts in this  
21 case. This agreement is known as a stipulation. You  
22 should treat all these facts as already proved. Your jury  
23 notebook identifies these facts.

24 I will now say a few words about your conduct as  
25 jurors.

1           First, keep an open mind throughout the trial  
2           and do not decide what the verdict should be until you and  
3           your fellow jurors have completed your deliberations at the  
4           end of the case.

5           Second, because you must decide the case based  
6           only on the evidence received in the case and on my  
7           instructions as to the law that applies, you must not be  
8           exposed to any other information about the case or to the  
9           issues it involves during the course of your jury duty.

10          Thus, until the end of the case, or unless I  
11          tell you otherwise, do not communicate with anyone in any  
12          way and do not let anyone else communicate with you in any  
13          way about the merits of the case or anything to do with it.

14          This includes discussing the case in person, in  
15          writing, by phone or electronic means, via e-mail, text  
16          messaging, or any Internet chatroom, blog, website or other  
17          feature.

18          This applies to communicating with your fellow  
19          jurors until I give you the case for deliberation, and it  
20          applies to communicating with everyone else, including your  
21          family members, your employer, the media, or press, and the  
22          people involved in the trial, although you may notify your  
23          family and your employer that you have been seated as a  
24          juror in the case.

25          But, if you are asked or approached in any way

1 about your jury service or anything about the case, you  
2 must respond that you have been ordered not to discuss the  
3 matter, and you should report the contact to the Court.  
4 And you can always speak directly to my court clerk, Dionna  
5 Negrete.

6 Because you will receive all the evidence and  
7 legal instruction you properly may consider to return a  
8 verdict, do not read, watch, or listen to any news or media  
9 accounts or commentary about the case or anything to do  
10 with it.

11 Do not do any research such as consulting  
12 dictionaries, searching the Internet, or using other  
13 reference materials, and do not make any investigation or  
14 in any way try to learn about the case on your own.

15 A simple example I had in a previous trial was a  
16 criminal case where one of the jurors wanted to go out to  
17 the scene of where the crime occurred, and that was  
18 completely prohibited because that resulted in that one  
19 juror receiving evidence that the other jurors were not a  
20 party to and that the other side could cross-examine or  
21 challenge in any way, and, of course, if there were any  
22 changes of the conditions of the scene, that would be  
23 totally unknown.

24 So I cite that as an example. You need to  
25 decide this case purely on the basis of the evidence which

1     you all have heard.

2             The law requires these restrictions to ensure  
3     the parties have a fair trial based on the same evidence  
4     that each party has had an opportunity to address. A juror  
5     who violates these restrictions jeopardizes the fairness of  
6     these proceedings and a mistrial could result that would  
7     require the entire processes to start over.

8             If any juror is exposed to any outside  
9     information, please notify the Court immediately.

10            Trials proceed in the following way. First,  
11     each side may make an opening statement. An opening  
12     statement is not evidence. It is simply an outline to help  
13     you understand what that party expects the evidence will  
14     show.

15            Plaintiffs Oracle will then present evidence,  
16     and counsel defendants for Rimini Street and Seth Ravin may  
17     cross-examine. Then defendants Rimini Street and Seth  
18     Ravin may present evidence, and counsel for Oracle  
19     plaintiffs may cross-examine.

20            After the evidence has been presented, I will  
21     instruct you on the law that applies to the case, and the  
22     attorneys will make closing arguments. After that, you  
23     will go to the jury room to discuss the case, to deliberate  
24     upon it, and to reach your verdict.

25            Given in open court, this particular date by me,

1 Larry R. Hicks, District Judge.

2 Ladies and gentlemen, those are just preliminary  
3 instructions, and you will have very extensive instructions  
4 on the law at the conclusion of the case.

5 But we'll now begin the case with the opening  
6 statement to be presented on behalf of plaintiff Oracle,  
7 and I will invite counsel to go forward. Mr. Isaacson.

8 MR. ISAACSON: Thank you, Your Honor.

9 Can everybody hear me?

10 I'm going to be speaking to you for about an  
11 hour so I'm going to hit the stopwatch.

12 My name is Bill Isaacson, I'll be speaking to  
13 you periodically through this trial, representing Oracle  
14 Corporation, two Oracle plaintiffs.

15 You'll also be hearing from Karen Dunn, my  
16 co-counsel, also from Tom Hixson, and you won't be hearing  
17 from her, but Dorian Daley is here for Oracle Corporation  
18 so you'll be seeing her every day.

19 We don't work alone. There are other people  
20 helping Karen, Tom, and Dorian, and I, so you'll  
21 periodically see those faces throughout the trial.

22 Now, I've got the privilege of giving the  
23 opening statement which means I'm going to talk to you, as  
24 the judge said, about what we expect to show during this  
25 trial. And we represent Oracle, two Oracle companies.

1           Oracle itself was founded in 1977. It was one  
2 of the first technology companies. That was 20 years  
3 before Google, before Facebook, it was even before the  
4 Internet. It was a small company started by four  
5 engineers. They wanted to create software to solve  
6 problems.

7           The defendant in this case, as the judge has  
8 already told you, is a company called Rimini Street and its  
9 CEO, Seth Ravin.

10           And you've already heard before the opening  
11 statement that the judge has told you that the defendants  
12 have already been found by the Court to have infringed  
13 certain software of Oracle and that they have been found to  
14 have deleted a directory of Oracle software that was in  
15 their possession before the lawsuit began.

16           In our case, we're going to flesh out the full  
17 details of what Rimini Street did at the direction of Seth  
18 Ravin, and when we do that, when we talk about Rimini  
19 Street's conduct, we're going to talk about three basic  
20 things that we're going to keep coming back to:

21           Massive unauthorized copying of Oracle software  
22 and documents.

23           We're going to talk about lies and deception by  
24 Rimini Street.

25           And then we're going to talk about interference



1 with Oracle's relationships with its customers.

2 What our case is going to be about is that  
3 Rimini Street, acting at the direction of Seth Ravin,  
4 engaged in massive unauthorized copying of Oracle software  
5 and documents so it could build a business from the ground  
6 up. Rimini Street copied Oracle software without a license  
7 so it wouldn't have to pay Oracle, and then the evidence  
8 will show it lied and concealed its conduct.

9 So let's talk a little bit about Oracle.  
10 Matt -- Matt's maybe the most important person here. He  
11 puts the stuff on the screen and makes sure it works. If I  
12 had to do it, it wouldn't work as well.

13 Something that works very well is the Oracle  
14 stack. This is basically what Oracle is about, and we'll  
15 be showing you things periodically on these screens to help  
16 you understand what I'm talking about and what the lawyers  
17 are talking about.

18 And at the top of the stack, applications.  
19 That's software. And Oracle provides all the types of  
20 technology in the stack.

21 Middleware is another type of software that  
22 connects to database. That's where information is. And  
23 then you're going to hear about how it connects to the  
24 operating system and virtual machines.

25 We'll have experts explain to you about how all

1 computers aren't like this, sometimes they're virtual  
2 machines.

3 And then there is hardware, servers and storage.

4 The database in the middle organizes and manages  
5 the information and connects to the software, some of the  
6 most complex information in the world.

7 Now, next we're going to talk about Oracle  
8 software, its enterprise software is the term that's used,  
9 and we're going to be talking about four of the most  
10 important types of Oracle software.

11 Oracle Database, down in the lower right, that  
12 is Oracle's first product. It was released in 1979 and was  
13 a big success.

14 Oracle took steps early on to protect it, and  
15 they got a copyright for it. They registered its first  
16 database copy registration in 1981, and over 30 years later  
17 it remains the most prominent database software in the  
18 world.

19 At various times Oracle has also bought other  
20 innovative companies and gained other innovative software.  
21 And we're going to be talking about PeopleSoft, Sieble, and  
22 J.D. Edwards.

23 So PeopleSoft software is about people who work.  
24 It's human resources software. It helps you manage  
25 payroll, hiring, employee information, and then, for the

1 people it works, it helps them manage what they do such as  
2 inventory and where the products are going.

3 Now, Oracle witnesses will take you on a brief  
4 tour of the software so you can see what it's like on a  
5 day-to-day basis. We're not going to do that right at the  
6 beginning of the trial, we'll do that a little later,  
7 because this trial is mostly about what Rimini did.

8 So we're going to start the trial about what  
9 Rimini did, but we'll come back to show you the software so  
10 that by the end of the trial, you'll have some idea of what  
11 people are looking at when they use it.

12 Siebel software is about customers, customer  
13 relationship management. It's software that helps business  
14 interact with customers. So it will help salespeople with  
15 leads. It will help salespeople get customers. It will  
16 help companies handle their customers once they have them.

17 J.D. Edwards. Well, once you've got people who  
18 work, once you've got customers, then you have finance and  
19 accounting, and then what happens to your products. J.D.  
20 Edwards software will help you with your finance, your  
21 accounting, and your supply management.

22 All together Oracle software solves problems.  
23 Oracle's a technology company that works for businesses,  
24 governments, nonprofit organizations. It provides them  
25 tools to do complicated jobs.

1           Oracle, for example, software will help you  
2           calculate paychecks even though all the different areas  
3           have different rules for paychecks. Oracle software deals  
4           with all that.

5           Oracle software will help manage everything that  
6           comes out of the factory even when things are going all  
7           around the country or all around the world.

8           Oracle enterprise software is software that  
9           helps businesses take orders, order supplies, pay vendors,  
10          schedule and manage production.

11          It manages books. It manages customers  
12          information. It profiles. It manages the sales team. It  
13          tracks sales opportunities. It runs call centers. It  
14          routes phone calls and manages payroll, and that's just a  
15          few of the things that it does.

16          It runs businesses. It's the backbone behind  
17          websites. It ensures that when you place an order online,  
18          when you order something and you buy something, that the  
19          order is placed that the -- that your credit card  
20          information results in payments being made, that that  
21          company is paid, and that the shipments are made. It  
22          operates as the backbone behind all that.

23          In its simplest form, the software is something  
24          you notice when it doesn't work because it's behind the  
25          scenes making things work. And that's what Oracle software

1 ultimately does, it makes it work.

2 Now, our evidence is going to show that Oracle  
3 helps businesses and people, businesses and people who  
4 spend their -- who have to manage money, who have to manage  
5 data and lets them focus on being productive, and Oracle  
6 software takes care of these other things.

7 Oracle software helps the local pizza shop  
8 manage its employees and its payroll, maybe even helps it  
9 get a second pizza shop.

10 Oracle software works with large companies. And  
11 for them it solves some of the most complicated problems in  
12 the world.

13 Oracle and those four engineers answered the  
14 question what if computers and software could work together  
15 and we could put that in the hands of businesses, schools,  
16 hospitals, charities.

17 The world would be a better place because the  
18 software would take care of all these other things, and  
19 people could focus on teaching, serving people, creating  
20 jobs. That's what Oracle software does.

21 Well, if you're going to have this complex  
22 software, you have to invest, and that's what Oracle does,  
23 it invests in innovation.

24 Oracle is a very financially successful company.  
25 There's going to be no need to apologize for that.

1 Financial success means that Oracle can innovate, it can  
2 create jobs, it can pay people.

3 And one of the main reasons Oracle is successful  
4 is it makes enormous investments in research and  
5 development. And what's scrolling across your screen here  
6 are all the different types of software, not all of them,  
7 some of them, that Oracle has created through research and  
8 development. Oracle makes new products, updates products,  
9 improves security, and even buys other innovative  
10 companies.

11 Now, Oracle is not alone in doing this. Oracle  
12 has competition. It's not alone in enterprise software.  
13 So it competes against other major enterprise software  
14 vendors like -- names you will hear during the trial, SAP,  
15 Sales Force, companies that are part of Microsoft. So  
16 these businesses have choices about Oracle versus other  
17 companies.

18 Now, during this case we're going to talk about  
19 both that software that I've been talking about and support  
20 for the software.

21 Now, Oracle does software, and then once you get  
22 it, because it's complicated software, they provide  
23 support, ongoing support, which customers pay for. So  
24 there's two parts to the Oracle package, the software and  
25 maintenance and support.

1           You will hear how support is hard work, it's  
2 complicated, and it's technical. One piece of support work  
3 might take weeks.

4           It involves -- at the customers -- the customers  
5 dealing with Oracle support are IT people and business  
6 specialists. This is complicated stuff.

7           So Oracle support has a lot of different facets.  
8 This is just some of it.

9           There's an online library, and, boy, is it  
10 large, and you're going to hear about that, and that's  
11 where IT professionals access in order to solve problems.  
12 There's online support, there's 24/7 phone support.

13           Now, maybe we're used to picking up the phone  
14 and calling for phone support. One of the things that  
15 you'll hear about, and I learned from this case, is that IT  
16 specialists are quite happy not picking up the phone and  
17 that most of the customer services is actually online and  
18 through the online library.

19           Oracle also provides new software releases. So  
20 when you're on Oracle support, they are fixing things,  
21 they're maintaining it. But also when there's a new  
22 version, you get that.

23           So if you had a home computer with software on  
24 it, and there's a new version of that software, you might  
25 have to pay for it and start over from scratch. When

1 you're on Oracle support, you get the new software as well  
2 as updates, things that fix bugs and security. And I'll  
3 talk about security in a minute.

4 But -- actually, go back, Matt.

5 One thing I wanted to let you know is that all  
6 these different things, they're mainly software. That's  
7 what's in the library, that's what's in the updates, that's  
8 what's in the bug fixes. We're talking about software.

9 Now, Matt, yes, security.

10 Security, I'll just touch on this a minute,  
11 because businesses have sensitive information. We've  
12 already talked about payroll, employee's Social Security  
13 numbers, financial information, hospital patient records,  
14 salary information.

15 We know security is a moving target, and you  
16 have to keep updating security in order to avoid hackers.  
17 So security is an important part of Oracle support.

18 Now, what customers pay Oracle for this is a  
19 license fee and then annual charges for the support. So  
20 when you're a customer, you negotiate the license fee at  
21 the beginning, "How much am I going to pay for the  
22 software?"

23 And then after that you pay 22 percent of that  
24 license fee every year that you want that annual support.  
25 So if you have a license fee of a hundred dollars or a



1 thousand dollars or a million dollars, each year you pay 22  
2 percent. And customers negotiate that initial license fee  
3 in order to control their costs. And if they don't like  
4 it, then they go to the other companies I talked about.

5 So what are customer reactions to this?

6 Now, the judge mentioned that there are certain  
7 things the lawyers have agreed upon, stipulated facts, and  
8 this is one of them.

9 The lawyers have agreed that on average over 95  
10 percent of Oracle support customers renew support with  
11 Oracle every year. That's a pretty high mark.

12 Why does that happen? Because customer  
13 relationships are critical in the software industry and for  
14 Oracle. Support is an important part of that relationship.  
15 Oracle support is valuable to customers.

16 Now, the evidence is going to show that, sure,  
17 some customers leave Oracle. That's what happens. They  
18 leave for a variety of reasons. Some change software, some  
19 go out of business, some decide to go into a new business.  
20 Different things happen.

21 And there are definitely customers who sometimes  
22 complain. We've got thousands of customers. But the  
23 evidence is going to show, and we'll come back to this,  
24 that very few of those customers leave because they're  
25 dissatisfied with Oracle.

1           So, as the judge said, you're going to be  
2           hearing from some live witnesses as well as some videotape  
3           of witnesses.

4           And for Oracle you'll be hearing live on the  
5           stand Safra Catz, who is one of the two CEOs of Oracle.  
6           She's here today.

7           You'll hear from Edward Screven who is the chief  
8           corporate architect for Oracle. And he's going to talk to  
9           you about security issues.

10          Safra Catz is going to talk to you about what  
11          Oracle is about. She will talk to you about support. She  
12          will talk to you about the things that I've started off  
13          talking to you about in more detail.

14          And then Buffy Ransom, who is in customer  
15          support for Oracle, will talk to you how support works at  
16          Oracle.

17          Now, they will not be our first witnesses  
18          because this case is about what Rimini did, and what Rimini  
19          did was mostly kept secret from Oracle.

20          In addition, because the way the trial --  
21          because the way discovery happened, and so one of the  
22          reasons we have information in this case is because the  
23          case was filed several years ago, and after there's  
24          documents exchanged and there's testimony taken.

25          So we've acquired information, and not all that

1 information could be shared with Oracle executives. So one  
2 of the things is, with this public trial, they will be  
3 learning alongside of you what Rimini did.

4 In order to tell you what Rimini did, that's  
5 where we want to start off.

6 So the judge told you about expert witnesses.  
7 These are people because of their credentials can come talk  
8 to you about their opinions about what happened, and our  
9 first witness will be professional Randy Davis of MIT, a  
10 professor of computer science there, and he is going to  
11 talk to you about the massive copying that Rimini Street  
12 did of Oracle software.

13 He is going to tell you that if you -- explain  
14 to you that if you printed out all of these copies of  
15 Oracle software and documents, that they would stretch from  
16 Las Vegas to the northern California operating facility of  
17 Rimini Street.

18 And we will wait to see if any Rimini witness or  
19 any Rimini expert says that Professor Davis is wrong and  
20 that copying did not take place.

21 Another expert witness you will hear from is  
22 Christian Hicks. He is going to talk about what Rimini  
23 Street did with -- principally with automated downloading.

24 Rimini Street was not satisfied with what they  
25 could get with the click of a button and doing it manually,

1 they wanted to suck up thousands, tens of thousands of  
2 documents more. So they had to have automated tools to do  
3 that, and he will talk about the massive downloading that  
4 happened.

5 We will talk -- then we will have our expert  
6 witnesses, at the conclusion of the case, close to there,  
7 about damages, Edward Yourdon and Elizabeth Dean.

8 Edward Yourdon has worked in the computer  
9 science field with customers for 28 years. Elizabeth Dean  
10 is a CPA who has testified as a damages expert on many  
11 occasions including in intellectual property cases such as  
12 this. And they will talk about how to estimate damages in  
13 this case.

14 And then there's the defendant, Rimini Street  
15 and Seth Ravin it's CEO.

16 Rimini Street, the evidence will show, did not  
17 make software of its own. What they did was provide  
18 maintenance and support for Oracle software. And Mr. Ravin  
19 is its founder and CEO.

20 And because we want to know what Rimini did, as  
21 part of our case we will call Mr. Ravin to the stand and  
22 ask him questions about what happened, and we will talk  
23 about Rimini's business.

24 Rimini's business, as Mr. Ravin has written --  
25 this is one of the documents produced in discovery in this

1 case. This was a confidential memo given to investors.

2 And what this says is their business model  
3 focuses exclusively on the most profitable component of the  
4 software business, support, without any of the capital  
5 investment required to develop software. They wanted to  
6 get into the profits without any capital investment like  
7 Oracle has to do.

8 So -- and this case is about Rimini's copying  
9 and lies. And you're going to hear about that. But Rimini  
10 may also try to justify that conduct by saying, look, we  
11 give better prices. We give as much as 50 percent off.

12 Now, the evidence is going to show that when  
13 they do this -- let's go to the next slide, Matt -- they  
14 tell customers don't innovate, don't change, keep your old  
15 software. Just keep that old Atari system. Don't get the  
16 new computer game systems.

17 And they will tell customers no new software,  
18 don't update, keep it the same for as long as 10 years, or  
19 even the year 2020. And that's going to be the same for  
20 security. Their message to customers is don't worry about  
21 updating security. Don't worry about data breaches.

22 The evidence will show that for years Rimini  
23 took Oracle customers, told them they were in good hands,  
24 and provided no security updates. None.

25 The evidence will show that 50 percent off is

1 not a justification under the law for copyright violations.  
2 The evidence will also show that 50 percent off is not a  
3 discount for what was being provided. It was an  
4 overcharge.

5 The reason 50 percent off is not a justification  
6 for what happened, one of the reasons is copyright law.  
7 This case is going to be about copyright law. And the  
8 judge has mentioned that.

9 And the judge has also explained to you he's  
10 going to explain to you what you should know about  
11 copyright law at the end of the case in the final  
12 instructions. So during this period of time we're going to  
13 give you evidence so that when you hear that law you'll  
14 know how to fit the facts into the evidence.

15 Copyrights don't protect everything, but they  
16 don't -- they don't protect automobiles or toasters. They  
17 do protect software.

18 Software is expensive to develop but easy to  
19 copy. Without copyright protection, you can invest in  
20 software and anyone can copy it, whether it be Las Vegas,  
21 northern California, or any country in the world.

22 Thanks to copyrights, Oracle can invest in  
23 software, hire people. It's important to software and the  
24 economy.

25 The judge mentioned you, the jury, are part of

1 the United States Constitution. So are copyrights. It's  
2 written into Article I of the United States Constitution.

3 Oracle followed these copyright laws. It  
4 creates software. It sells new products. And it needs  
5 copyright protection so that folks like Rimini just can't  
6 copy it, or that anyone in the world can't copy it.  
7 Copyrights protect innovation.

8 So undisputed facts, again, stipulated facts was  
9 the word the judge used. Maybe this is an unusual case  
10 because the lawyers actually have agreed on a fair number  
11 of things, but that's because we had discovery.

12 And so both sides could look at the evidence.  
13 And even the lawyers for Rimini had to agree with us on  
14 certain things, and one of them is that Oracle software and  
15 support materials are copyright protected.

16 You will learn that both sides agree that Oracle  
17 holds copyrights on the software and support materials at  
18 issue in this case, and the copyrights are valid. So  
19 you're not going to have to learn a lot of copyright names  
20 or numbers. The sides have agreed the copyrights are valid  
21 and in effect.

22 We're -- I'm going to tell you that there are  
23 going to be other issues that will be undisputed by the end  
24 of the trial, we believe, based on the evidence that will  
25 be presented.

1           The key issues that will be undisputed is that  
2       Rimini never paid Oracle for any license.

3           It will be undisputed based on the evidence you  
4       hear that Rimini copied Oracle software.

5           It will be undisputed that there was copyright  
6       infringement of PeopleSoft software.

7           It will be undisputed that there was copyright  
8       infringement of Oracle Database.

9           It will be undisputed that Oracle should get  
10      damages.

11          Apart from the undisputed issues, as I said at  
12      the outset, there's three issues we are going to prove:  
13      that there was massive, unauthorized copying; that there  
14      was interference with our customer relationships; and there  
15      was lies and concealment.

16          The judge has already told you how the evidence  
17      should be considered based on the burden of proof of more  
18      likely than not. This is not a criminal case, so you  
19      simply weigh what's more likely.

20          Now, Oracle's first claim is about copyright.  
21      Copyright means that no one's allowed to copy your work  
22      without your permission, and when someone copyrights  
23      copyrighted material without permission, that's called  
24      copyright infringement.

25          So we will explain that copying software, plus



1 no license, if it's unauthorized, one plus one equals two.  
2 Copyright infringement. It will be that simple.

3 Now, in this case, Rimini, copying software,  
4 copied massive amounts of Oracle copyrighted software and  
5 support materials, and, two, it did that without  
6 authorization.

7 Rimini will say it did some of that with  
8 authorization, and we will talk about that during the  
9 trial.

10 What about Rimini's authorization? Rimini did  
11 not have a license from Oracle. The evidence will show  
12 that Rimini had no Oracle license.

13 So Rimini doesn't have a license with Oracle.  
14 So what is it going to rely on? It's going to rely on its  
15 customer licenses.

16 There was massive unauthorized copying that you  
17 will find even once the judge instructs you on the law.  
18 And he's going to instruct you on the license defense, how  
19 that works. And we will ask you to follow that law.  
20 That's going to be important.

21 And so that you can have facts that you can  
22 apply against that law, we are going to talk about some  
23 rules that were in the customer licenses so that you can  
24 understand the evidence as it's coming in.

25 And the judge, at the end of the case, will tell

1 you how to interpret the rules and how to interpret the  
2 license defense. We'll be making references to those  
3 rules.

4 And so let's go to the next slide.

5 We'll be talking about three rules based on the  
6 customer licenses.

7 The first rule is that software copies will only  
8 be at that customer's facilities. So if you're a customer  
9 of Oracle, and you get Oracle software, you keep it at your  
10 customer facility to work on. You don't send it to other  
11 facilities.

12 Second rule. Software copy is only for that  
13 customer. You buy the Oracle software, you use it for  
14 yourself. You don't give it to someone else to use.

15 Third, no automated downloading. A lot of the  
16 software is available on websites. No use of automated  
17 downloading which puts large number of requests in at one  
18 time.

19 So -- and these rules make some sense. Imagine  
20 you created some software in your garage, and you're  
21 excited. You need some help. Maybe you get a local group  
22 called Geeks on Wheels.

23 They come in, and you might say to them three  
24 things: You're going to work on my software here, you're  
25 not going to take it somewhere else. You're going to work

1 on it for me, you're not going to use it for other people.  
2 And while you're here, you're not going to install some  
3 programs on my computer that do things I don't understand  
4 and possibly hurt my computer.

5 Now, one term that's going to come up in this  
6 case, so I'm going to take a minute to define this term, is  
7 cross-use. It's a shorthand for rule number 2, that you  
8 only use it for that customer.

9 So if -- when you have someone looking at  
10 customer A's software and then using that to support  
11 customer B, a different customer, you are using the  
12 software for someone else, and that's why we call that  
13 cross-use.

14 So, for an example, doing work on a security  
15 update or another update for one customer and sending it to  
16 another, or testing a customer's software using the  
17 software of another customer.

18 By the end of the trial, the evidence will show  
19 this is what Rimini did, and it did it without telling its  
20 customers what it was doing.

21 We'll also be talking about a second claim -- we  
22 have a couple claims in this case, but another principal  
23 claim is interference with customer relationships.

24 The law on wrongful interference protects us  
25 from dishonest people who would harm our relationships with

1 customers. This claim will be based on lies to customers.

2 The judge will instruct you on that law. The  
3 facts will show that Rimini mislead Oracle customers.

4 So when we talk about the evidence supporting  
5 these claims, let's talk a little bit more about copyright.

6 The evidence will show that Rimini copied  
7 without authorization, and it did that over and over again.  
8 Again, why do we have this evidence?

9 Because this is a lawsuit, we were able to take  
10 discovery. So both sides produced a lot of documents to  
11 one another. People have testified. And so during this  
12 trial, we're going to tell you what we learned.

13 And we learned that this copying took a number  
14 of different forms, a library, environments, website  
15 extracts, cross-uses and automatic downloads, and the  
16 evidence is going to show that Rimini did all of this.

17 So let's start with this Oracle website  
18 extracts. So at the very beginning of its business, Rimini  
19 built it by going to an Oracle website. You'll hear the  
20 name Siebel SupportWeb, which had software and support  
21 documents.

22 It used a customer ID to get that information,  
23 and then it took information off and gave it to other  
24 customers. It needed to do that because it was just  
25 starting the business, and it wanted to show that it had a

1 lot of resources.

2 So it would use one customer ID and then share  
3 that with other customers. That -- it handed out Oracle  
4 software to its own customers without authorization, and  
5 they did that to build a business.

6 Now, where did they get those IDs? One of those  
7 IDs came from their first customer. This is Rimini's first  
8 customer, Leads Customers Growth.

9 The chief executive of Leads Customers Growth  
10 was someone, Bill Leake, who knew Seth Ravin since the  
11 third grade. Guess where Mr. Leake is now? He works for  
12 Rimini Street.

13 The evidence is going to show that in 2006, LCG  
14 was a company that provided marketing services. It wanted  
15 to market Rimini, and it wanted to be paid for those  
16 services. So Seth Ravin came up with a plan.

17 LCG was going to pretend -- LCG did not have any  
18 Oracle software, so Mr. Ravin wanted them to go get some,  
19 some Siebel software. So LCG was going to pretend it  
20 wanted to install their software so that Rimini could get  
21 copies of it.

22 Rimini would pay LCG for its marketing services  
23 in order to compensate them for getting that software, and  
24 the result, Rimini's first customer was not a real  
25 customer.

1           The evidence will show that Mr. Leake then gave  
2           the Siebel ID he got by getting it from Siebel, and then  
3           Rimini used it to create those disks without any authority  
4           and give it to other customers.

5           Let's go back to our little guide here, Matt.

6           The library. Another part of Rimini building  
7           its business was a library, a library of files at Rimini  
8           Street that included Oracle software, all of it,  
9           PeopleSoft, J.D. Edwards, Siebel, Oracle Database, all in  
10          violation of licenses that they -- because they took these  
11          off of websites, and they violated the licenses of those  
12          websites.

13          Now, at the outset of this case something  
14          interesting happened. Back in 2011, Rimini told the Court  
15          something. Oracle accused Rimini Street of having this  
16          library, and Rimini Street told the Court such a library  
17          has never existed at Rimini Street. It said Rimini Street  
18          respects the intellectual property rights of Oracle.

19          The evidence will show that Rimini lied to the  
20          Court. It also lied to customers. And at the end of the  
21          trial you will be able to, as the judge instructed you,  
22          evaluate who's telling the truth from the witnesses from  
23          what you hear on -- from this point forward.

24          The evidence is going to show that that library  
25          existed.

1                   Now, some internal documents have been produced  
2 by Rimini Street. This is one of them from a  
3 vice-president of Rimini Street.

4                   And we're going to show you a lot of documents.  
5 And I'm going to appreciate your patience as we go through  
6 these, because in order to show you the facts, okay, we're  
7 going to have to show you these documents, to show you what  
8 happened.

9                   And Mr. Chiu says, "I'm looking to have a  
10 complete library of the content that's available from  
11 Customer Connection."

12                  Customer Connection is an Oracle website.  
13 You'll hear about that website as well as another one  
14 called E delivery.

15                  He says, "I think we should download all the  
16 available content available."

17                  And another gentleman working at Rimini Street  
18 says, "I'd like to plan on pulling down as much of the  
19 content as possible."

20                  The evidence will show that in 2006, when this  
21 company was just starting, that Seth Ravin, the CEO of  
22 Rimini, approved this downloading from Oracle websites, and  
23 that Rimini used this software to build a library of Oracle  
24 software so that they could take things out when they  
25 needed it so they could get customers. And the evidence

1 will show Rimini called it a library.

2 So, Matt, let's go back to our little guidepost  
3 here.

4 Let's talk about the environments.

5 Now, Rimini environments are working copies of  
6 Oracle software. So when people have -- are operating the  
7 software, it happens in the environment.

8 Now, working environments are not just used  
9 for -- when you use it at the office. Sometimes you have  
10 other copies in other environments so that you can test  
11 things, so that you can develop updates, so you can  
12 troubleshoot problems that are happening over in the other  
13 system.

14 So Rimini had these environments for testing,  
15 development, troubleshooting, supporting clients, and  
16 training their own people.

17 So a part of the Rimini system looked like --  
18 we're going to talk about that. Outside of the system,  
19 there's Oracle software, Oracle software and Oracle  
20 websites, installation media, which are DVDs, and -- which  
21 could come from the Oracle -- or from Oracle to the  
22 customer.

23 Then they go -- went into the Rimini system.  
24 They went into that software library that I described, and  
25 then they went into these Rimini local environments.



1           And these Rimini local environments, there were  
2 many of them, and they were copied -- many of them were  
3 copied over and over through a cloning process. And each  
4 of these Rimini environments have unauthorized copies of  
5 Oracle software.

6           Then the software moves to part of the  
7 environment for customer support, Rimini employee training,  
8 and testing and development, all with Oracle software, all  
9 within the Rimini system.

10           Professor Davis will be the first witness --  
11 Karen Dunn will introduce him to you -- will talk about  
12 this and explain this to you further.

13           So -- and what Professor Davis will explain, and  
14 what I'll explain now, next slide, is that Rimini built its  
15 business with these environments.

16           And it's first customers almost all had these  
17 environments with the Oracle copies on them. In 2006, the  
18 first year where Rimini had customers, 14 of their 18  
19 customers. Almost all were customers by the end of 2007,  
20 three-quarters of their customers by September 2008.

21           And one of the reasons we know this is because,  
22 again, the uncontested facts. Due to the evidence produced  
23 in discovery, even Rimini Street had to admit that these  
24 environments existed with Oracle copies.

25           And the evidence is also going to show that all

1 of the Oracle software was on these environments, the  
2 PeopleSoft, J.D. Edwards, Siebel, and Oracle Database.

3 In fact, Rimini has admitted to lots of copying  
4 of these environments, all of these environments, 366 for  
5 PeopleSoft, to 10 for J.D. Edwards, 87 for Siebel, and 216  
6 for Oracle Database, all with copies of the software.

7 One of the environments, it's like a file  
8 drawer, and Professor Davis will explain to you that  
9 that -- those file drawers had hundreds of copies of Oracle  
10 software and documents, even thousands. These are not  
11 customer environments, these are environments located at  
12 Rimini.

13 Customers can have these environments, but  
14 Rimini was not satisfied with that. They couldn't work  
15 with that. They had to build the environments on their own  
16 systems without authorization.

17 So when you take all these environments and all  
18 these files, you've got over 400 environments, all with  
19 hundreds or even thousands of copies of Oracle software and  
20 documents.

21 So what happened is customers said we're leaving  
22 Oracle for Rimini Street, and that's what they thought.  
23 But, in actuality, the Rimini Street system was full of  
24 Oracle. Rimini Street was saying come to us, but they were  
25 using, without authority, the Oracle software.

1                   And so -- next slide, Matt.

2                   They would say we give better support than  
3 Oracle does, and we offer 50 percent off. But they're  
4 carrying the Oracle toolbox, all of the Oracle software.

5                   They're offering 50 percent off because they  
6 never had to pay for a license, because they don't have  
7 R&D, they don't have capital investment, and they're using  
8 Oracle software without paying for a license.

9                   The evidence is going to show also that Oracle  
10 support is a lot more than answering the phone. Rimini  
11 Street likes to talk about how promptly they answered the  
12 phone.

13                  Support is about what happens after someone  
14 answers the phone. And the evidence will show that Rimini  
15 Street was surrounded by Oracle materials when they  
16 answered the phone.

17                  So let's go back to our little guidepost here,  
18 Matt, and let's talk about those cross-uses of fixes and  
19 updates.

20                  So part of support is updating the software,  
21 maintaining it, fixing bugs that come up, providing  
22 security. So Rimini would create updates and fixes for one  
23 customer and then distribute them to the other customers.

24                  Matt, give us a little illustration.

25                  So you do this for client A and send it out to

1 the other clients in violation of the rules to use it only  
2 for that customer.

3 Now, we are going to spend time talking to you  
4 and showing you evidence about how Rimini built its  
5 business. This is Rimini's first customers.

6 We mentioned LCG. You can sort of see their  
7 logo. That's that customer that wasn't real. There's a  
8 company called Beekley, that was a 24-hour customer  
9 initially, and then there's the other customers.

10 And what the evidence will show is the customers  
11 had Rimini environment with copied Oracle software. The  
12 customers have those DVDs with extracts from Siebel support  
13 web, and that all these customers were being acquired while  
14 that library was being built and in existence.

15 The evidence will show that Rimini grew to  
16 copyright infringement and deception. They launch in 2005,  
17 they got their first customer at the beginning of 2006,  
18 that's that customer that wasn't real, then they started to  
19 create the library, then they started to create these  
20 environments, and as they created the environments and  
21 engaged in the copying, then they had to do the automated  
22 downloading, and their customer base grew as the copying  
23 grew.

24 Now, Rimini Street will talk about its excuses  
25 for this. For copying of PeopleSoft and Oracle Database

1       there are no excuses.

2               Rimini has to show you some license somewhere  
3       that permitted the copying, otherwise it's not authorized  
4       and it's a violation of copyright laws.

5               This trial is going to show that Rimini had no  
6       excuse, no authorization, no license, and there are  
7       copyright violations of PeopleSoft and Oracle Database  
8       software.

9               Now, you will hear evidence that Rimini Street  
10       believed they were authorized. They believed they had a  
11       license, And now that there is discovery they have learned  
12       that they did not.

13              They want you to hear this evidence about what  
14       they believed, even though they know they didn't have a  
15       license now, in order that you don't award punitive  
16       damages. But the evidence about what they believe does not  
17       have anything to do with Oracle's entitlement to actual  
18       damages.

19              Now, for the other two types of software, J.D.  
20       Edwards and Siebel, Rimini Street will offer an excuse,  
21       language about how you can have copies for emergency  
22       backup, disaster recovery, and archive. There's a little  
23       picture of a hurricane.

24              When you have valuable software and there's a  
25       possibility of disaster, you send a copy somewhere to keep

1 it safe. And the way Rimini Street does this is they  
2 actually put it on a USB or a thumb drive, and they send it  
3 to a client. And the client can keep it on the drive or  
4 put it on some other form, and they put it on a shelf  
5 somewhere, pure and unchanged, so if there's ever a problem  
6 they've got a clean copy to replace their current copies.

7 The evidence will show that this excuse will  
8 fail to excuse the copying of J.D. Edwards software and  
9 Siebel software, that this excuse is concocted.

10 The evidence will show that Rimini Street knows  
11 better. The copying, the environments, the library, the  
12 cross-uses, the fixes, everything I've been talking about,  
13 are not that backup copy that you put on tapes or a disk or  
14 a thumb drive on a shelf someplace safe. All of those  
15 things I've been talking about are not emergency backup,  
16 disaster recovery or archive.

17 So let's go back to our little guidepost here,  
18 Matt. And the last piece is the automated downloads.

19 The automated downloads are part of our  
20 interference claim. They're also part of other laws the  
21 judge will tell you about to protect our computer systems.

22 Oracle computer expert Christian Hicks reviewed  
23 Rimini's automated downloading. That's a lot of work  
24 because you have to go into their systems and do a lot of  
25 analysis. There was a lot of work to review this because

1       there was a lot of downloading by Rimini.

2               This was not manual downloading. This was --  
3 manual downloading was taking too long. Rimini wanted  
4 massive amounts of information. They had to use automated  
5 tools, and they would let them run for hours and hours and  
6 hours. You didn't have to have anybody in the chair. You  
7 just hit the button and it just runs all day and all night  
8 sucking up Oracle software and documents.

9               And Christian Hicks -- stay with that slide,  
10 Matt -- will walk you through what they took, what they  
11 copied, how much, millions of pages, tens of thousands of  
12 pages, and how many times they ran these programs.

13              We will wait to see if any Rimini expert says  
14 this did not happen.

15              The evidence will show that Rimini needed  
16 automated downloads. One of the reasons we know this is  
17 because they wrote it down internally.

18              This is a Rimini Street document we got in  
19 discovery. It says "use automated tools." It's the only  
20 feasible way to get all information clients have purchased.

21              They were trying to be in the client service  
22 business. They had to have this information, and this was  
23 the only way they could do it.

24              The problem was -- next slide -- in 2007, Oracle  
25 changed its terms of use for its website. That's the

1 agreement that governs you when you get on a website, what  
2 you can do, and this was not one of those rules on the  
3 Internet that you don't notice, because Rimini Street saw  
4 this one.

5 This terms of use expressly prohibited automated  
6 tools. Oracle didn't want to have a website where somebody  
7 was coming on and making all these thousands of requests  
8 automatically where other people were trying to get  
9 support.

10 This isn't -- this was a rule that Rimini knew  
11 about it, and they wrote about it again in one of those  
12 internal documents.

13 Here's that vice-president of Rimini again,  
14 Mr. Chiu. "Oracle has updated their terms of use for CC,"  
15 Customer Connection, that's one of those websites I  
16 mentioned.

17 And he's talking about the rules they're seeing.  
18 "For example, you may not use any software routines,"  
19 that's what these automated tools are, software routines,  
20 "commonly known as robots, spiders, scrapers, or any other  
21 automated means."

22 The evidence will show they used automated  
23 means, and this was a rule that Rimini knew about, they  
24 were paying attention, and after they saw the rule, they  
25 kept doing it.



1           One of the results that Christian Hicks will  
2 tell you about is how much traffic resulted on the Rimini  
3 site; right?

4           He'll explain this in more detail. This is what  
5 happened on one of the Oracle websites. The red line is  
6 the non-Rimini search requests. Those are customers making  
7 requests looking for help.

8           The blue is what Rimini was doing using those  
9 automated machines, sometimes over 30,000 requests, more  
10 than all the other customers that Oracle were doing  
11 combined.

12           And the evidence will show that Rimini knew they  
13 shouldn't be doing this.

14           When they got caught, when Oracle noticed this  
15 traffic on the website, one of their managers wrote, "It  
16 seems they're on to us from massive download volumes."  
17 Documents like this will show you that Rimini knew it was  
18 guilty.

19           Rimini's massive automated downloading slowed  
20 down Oracle's website. Christian Hicks will testify to  
21 that. It's because when you put too many requests on at  
22 the time, the website slows down. The more automated  
23 searches you run, the slower it will be, and this is for  
24 customers who are calling for help, even for customers in  
25 distress.

1 Christian Hicks will testify that the delays  
2 would be as long as 20 seconds or 40 seconds. You will  
3 decide what it's like to be a customer who needs help  
4 waiting 20 seconds.

5 When you're a customer who needs help, that's a  
6 lot more difficult or irritating than sitting through three  
7 seconds of an ad to watch a YouTube video. This is serious  
8 business.

9 The evidence for our interference claim will  
10 show that Rimini lied to customers. Evidence will show  
11 that Rimini had one story it told to customers and Rimini  
12 did the exact opposite. These stories were standard  
13 messaging to customers by salespeople.

14 For example, this one, a standard message, a  
15 sales FAQ, frequently asked question. Here's the  
16 frequently given response.

17 "Rimini Street maintains each individual  
18 client's materials in discrete silos."

19 The evidence will show that was false. They had  
20 libraries. They had environments they used from one  
21 customer to another. They had environments that crossed  
22 multiple customers.

23 One example of a lie is the next slide. This  
24 was made to a company called Carl Karcher. They own  
25 Hardee's.

1                   And Rimini Street, a PeopleSoft engineer there  
2                   named Krista Williams, told them, "in order to respect  
3                   Oracle's intellectual property and licensing," they know  
4                   about our copyrights, "we do not share software. To build  
5                   Carl Karcher's support environments, we use Carl Karcher  
6                   software."

7                   The evidence will show Rimini did the opposite.

8                   Mr. Ravin told another customer, the Abilene  
9                   School District, "we help you order two copies of the  
10                  current release of your products, one for your archives,  
11                  one you can ship to your support vendor to build a test and  
12                  development environment just for the Abilene Independent  
13                  School District."

14                  And the evidence will show that's not what  
15                  happened. The environment for that school district was  
16                  used for multiple customers.

17                  So that's how Rimini got customers. And you're  
18                  going to hear from customers at this trial. They will say  
19                  that they switched to Rimini. Some will say they liked  
20                  Rimini. They liked lower prices. Rimini will show you  
21                  customers they can find who complained from the thousands  
22                  of Oracle customers.

23                  But the customers, if you listen carefully,  
24                  after a customer complains or after a customer says they  
25                  like Rimini Street, if you listen carefully, you will hear

1 those customers say that if they had known about the  
2 illegal conduct, they would have not gone to Rimini, and  
3 they certainly wouldn't have given them a reference.

4 And this is an example of one of those customers  
5 saying that if -- this is JPAC Travel. If they had known  
6 that Rimini Street business model involved infringing  
7 Oracle copyrights, would you have contracted with Rimini  
8 Street in the first place? No. That's only common sense.

9 We're going to talk about references because  
10 Rimini Street depended on references.

11 Next slide, Matt.

12 So we're going to show you their top references.  
13 These are their top Siebel references. And we're going to  
14 show you how these references had the environments, that  
15 they had -- that the Oracle -- that the library existed  
16 while they had those customers, that these referring  
17 customers had those DVDs from the Oracle website.

18 So we are going to tell you -- next slide,  
19 Matt -- the evidence is going to show how many customers  
20 were told the truth by Rimini. Zero. That's what the  
21 evidence will show. Maybe one, Mr. Leake and Leads  
22 Customers Growth, that customer that wasn't real, but other  
23 than that, zero.

24 And without -- if the truth had happened, Rimini  
25 Street's business could not have existed or survived or

1 grown, and one of the reasons we know that is because  
2 Mr. Ravin has said that, again, in those internal  
3 documents.

4 Mr. Ravin wrote, "It wouldn't matter if we had  
5 the best JDE resources in the world if we don't resolve the  
6 foundation issues. It doesn't matter how good a job you're  
7 doing if you don't have the rights to do it. A client,  
8 first and foremost, must believe they have the right to be  
9 with us and use their software, or the rest is just noise."

10 I think you're going to hear a lot of noise as  
11 this trial goes on.

12 We are going to ask you to focus on, simple  
13 point, that when there is this illegal activity that is the  
14 foundation of a business, and when the foundation is  
15 illegal, if the truth had been told, that business would  
16 not exist, the customers would not have been taken, and the  
17 lost customers that Oracle had would not have gone to  
18 Rimini Street.

19 The evidence will show that no one would have  
20 gone to Rimini if they were told the truth.

21 We will ask you at the end of trial that common  
22 sense proposition. If all this massive -- if everything  
23 that was said in this public trial had been told to these  
24 customers from the beginning, not now, from the beginning  
25 when they were building that business, how many of those

1 customers would have left Oracle? No one would have gone  
2 to Rimini. Some would have left Oracle because companies  
3 go out of business, companies change to SAP. But no one  
4 would have gone to Rimini.

5 So we'll get to the issue of damages. As I've  
6 said, as the Court has said, the defendants have already  
7 been found by the Court to have infringed some Oracle  
8 copyrights. So we'll be talking about damages as well as  
9 for the additional copyright violations that you're going  
10 to hear evidence about.

11 You're going to hear about 364 Oracle customers  
12 that were lost to Rimini Street. Elizabeth Dean will  
13 testify about that. She won't say that Oracle lost all of  
14 the -- we're entitled to damages for all of those  
15 customers. She will explain to you that we're entitled to  
16 damages for only some of them.

17 But all the money that Rimini earned from  
18 charging 50 percent off and taking our software, they built  
19 this business on unauthorized copying and lies.

20 Elizabeth Dean will talk about copyright  
21 damages, and she'll go through those numbers in detail.  
22 You'll see from here most of it is about PeopleSoft, Oracle  
23 Database, and Siebel are quite large, and J.D. Edwards is  
24 significant but not as significant compared to the others.

25 And the evidence is going to show that Rimini

1 knew from the beginning that it was doing what it did  
2 without a license to make money.

3 Here's one of those documents that Rimini never  
4 expected to see the light of day. This is a Rimini  
5 software engineer who wrote internally, "something to be  
6 aware of is that we are using development Oracle software  
7 that I don't think is licensed. Just don't want that to  
8 fall back on us if we get audited. Because you can  
9 download Oracle software from their site but not to make  
10 money, and we're making a crap-load of money from their  
11 free stuff."

12 Rimini knew internally what was happening.

13 So, in summarizing the damages, Elizabeth Dean  
14 will explain all this to you and do these numbers with you.  
15 She will talk to you about how we lost customers from the  
16 copyright infringement, from the lies and interference with  
17 customer relationships.

18 You will hear about the two plaintiffs, Oracle  
19 International and Oracle America. Oracle International  
20 owns the copyrights so they're entitled to the copyright  
21 damages.

22 Oracle America provides support, and they  
23 entered the licenses, so they're entitled to additional  
24 damages for lost customers due to the lies and  
25 interference. And she will explain to you, do the numbers,

1 won't be duplicating any damages or having any overlapping  
2 damages, the interference damages add up to \$194 million,  
3 and the total copyright and interference damages add up to  
4 \$245.9 million.

5 It's a serious business. We lost customers.  
6 Oracle software was copyrighted without authority, and it  
7 was done at a massive level, so significant damages are  
8 being requested.

9 Now, we anticipate that Rimini will say that  
10 perhaps we are entitled to some money. Maybe they're even  
11 going to say we're entitled to something like \$10 million.  
12 But we'll have to wait and see what they say, but that's  
13 not the damages that were caused.

14 And as the judge said, you're going to be able  
15 to evaluate credibility at the end of this trial. So when  
16 Rimini says we are owed some money but this much lesser  
17 amount of money, like when they told the Court from the  
18 beginning that there was no library, you'll be able to  
19 evaluate the truth of what they're saying.

20 I hope this introduction was helpful. You'll be  
21 hearing from me and my colleagues throughout this trial.

22 We'll ask you to remember, even when all this  
23 information is coming in, those basic things, that there  
24 was massive unauthorized copying, that there was lies and  
25 concealment, and there was interference with our customer



1 relationships.

2 We will ask you to follow the law that Judge  
3 Hicks will give to you, to apply those three things that  
4 the facts will show to that law when you reach your  
5 verdict.

6 So I thank you for your time and attention, and  
7 we're going to be asking for a lot of your time and  
8 attention as this goes along, showing you more documents  
9 and showing you more testimony, but we're grateful for your  
10 service today.

11 THE COURT: Thank you, Mr. Isaacson.

12 Mr. Webb, I assume that you anticipate taking  
13 approximately an hour on your opening statement; is that  
14 correct?

15 MR. WEBB: Yes, sir.

16 THE COURT: In light of that, ladies and  
17 gentlemen, it would probably be a good time to take a short  
18 break, allow you to stretch, and we'll reconvene in  
19 approximately 10 to 15 minutes, whenever you're ready, and  
20 we'll then proceed with the defense opening statement. So  
21 you may go ahead and step down.

22 COURTROOM ADMINISTRATOR: Please rise.

23 (Recess from 9:20 a.m. until 9:37 a.m.)

24 THE COURT: Have a seat, please.

25 The record will show we're reconvened after our

1 first morning break.

2 And, Mr. Webb, are you prepared to go forward  
3 with the defense opening statement?

4 MR. WEBB: I certainly am, Your Honor.

5 THE COURT: All right. You're welcome to do so.

6 MR. WEBB: If this case were as cut and dry as  
7 Oracle's lawyer just made it seem, we wouldn't even be here  
8 today. The fact is this case is about a whole lot more  
9 than what you just heard.

10 But at its core, at its essence this case can be  
11 boiled down to just one thing; choice.

12 You see, Oracle chose to put into every single  
13 one of its contracts with every single one of its customers  
14 the right for that customer to choose whoever they want to  
15 provide maintenance.

16 Then Oracle made another choice. They chose to  
17 provide poor, nonresponsive customer service, and then to  
18 jack up the prices for their services to achieve a profit  
19 margin of 94 percent; 94 percent.

20 Simply put, the evidence will show in this case  
21 that Oracle chose profits over customer service, and that  
22 choice created a vacuum in the marketplace, a void that  
23 sooner or later someone was going to fill.

24 Seth Ravin stepped up to the plate to give  
25 customers a better option. And this lawsuit is Oracle's

1 response to his decision.

2 My name is Trent Webb, and along with my team,  
3 we are honored to represent Seth Ravin and the 600 hard  
4 working folks at Rimini Street. And we are here to stand  
5 for choice.

6 In this case, we will establish three essential  
7 truths, truths that you can count on to resolve every  
8 question at the end of this trial.

9 First, customers have a right to choose Rimini.  
10 It's in the contract. Oracle cannot go back on that word,  
11 and Rimini has a right to be in this business.

12 Second, the process used by Rimini, the thing  
13 they actually do, has not caused Oracle any financial harm.

14 Let me repeat that. The thing that we are  
15 accused of doing wrong has not hurt Oracle in any way, and  
16 we will prove that to you.

17 The vast majority of what Rimini Street does is  
18 not even at issue in this case. The things that are at  
19 issue were done by Rimini to increase efficiency, not to  
20 hurt Oracle.

21 And, third, there will be no evidence that any  
22 customer of Rimini would have stayed and paid Oracle.  
23 Oracle is asking for a quarter of a billion dollars, not  
24 just from Rimini Street, but from Mr. Ravin individually.  
25 To do that, they're going to claim 229 of their customers

1     went to us, and they would not have gone to us but for our  
2     infringement.

3             But that's not all they have to prove. They  
4     also will have to prove to you with actual evidence that  
5     but for Rimini Street, if they weren't even on the scene,  
6     that these folks would have stayed and continued to pay  
7     Oracle.

8             In this case, they took the deposition of a lot  
9     of our customers. They sent subpoenas to a whole bunch  
10    more. They tried their best to get that evidence to tell  
11    you, yeah, this -- this customer would have said and paid,  
12    but they'll have no proof in this trial.

13            These essential truths will shed a very bright  
14    light in the flaws in their theory. What you'll see as  
15    this case that goes along is the story you just heard will  
16    not marry up to the facts. What you'll see is their case  
17    is built on half truths and diversions, but more than that,  
18    accusations, calling my client liars.

19            Yeah, you'll see this case is about a whole lot  
20    more than what you just heard. To really get a feel for  
21    what this case is truly about, I have to first set the  
22    stage for you. And to do that, I have to introduce you  
23    properly to Mr. Seth Ravin.

24            Mr. Ravin will take the stand early in the case.  
25    And I will tell you, for one, I am delighted because of it,

1 because you'll get to hear from him firsthand exactly what  
2 Rimini Street does, why they do it, and why they've been  
3 successful.

4 Mr. Ravin has been in this field for nearly 30  
5 years. He's widely viewed as the leader in software  
6 maintenance. And he blazed a trail in this industry not by  
7 taking stuff that wasn't his, but by being a visionary in  
8 customer service.

9 And in 1996, he went to work at PeopleSoft.  
10 PeopleSoft at that time was a standalone company. Later it  
11 was acquired by Oracle. For purposes of this trial, you  
12 can sort of view them as one in the same. And in 1996 he  
13 went to work at PeopleSoft.

14 There he was in charge of a team that installed  
15 the software. They would take DVDs to load up and install  
16 software for all its customers. And I've got three here,  
17 but these software programs are massive. There may be a  
18 box of these DVDs that have to be installed. He led a team  
19 in doing that.

20 And in that process something very important  
21 happened. He was in the trenches, and he got to meet the  
22 customers and talk to the customers, hear their concerns  
23 and understand why they weren't satisfied. And Mr. Ravin  
24 was successful.

25 Soon he was promoted to global head of all

1 installation, going around the world and working with all  
2 these clients in installing the PeopleSoft software.

3 And, again, he got to speak with these  
4 customers, got to know them, got to understand their  
5 business and hear their concerns.

6 Soon Mr. Ravin was promoted to vice-president of  
7 enterprise licensing. And in that capacity he was in  
8 charge of the maintenance business. And let's talk about  
9 what maintenance really is. Before we go any farther,  
10 let's really talk about that.

11 For me software maintenance is a little  
12 difficult to comprehend, so I compare it to something  
13 that I know a little bit about; cars.

14 Just like your car, sometimes your software  
15 breaks down, you need it fixed. And just like your car,  
16 sometimes you need service, your software needs to be  
17 updated. Software maintenance does essentially that for a  
18 client and their software.

19 Now, let's talk about how this all fits into the  
20 picture of the business model for PeopleSoft.

21 As you heard from Mr. Isaacson, customers buy a  
22 license to use this software. They don't actually own the  
23 copyright and the software.

24 Now, when they do that, they pay money to  
25 PeopleSoft, and they get the right to use that software

1 forever. It's called a perpetual license.

2 It's not exclusive, because that version of  
3 software could be identical to the same version that a  
4 whole bunch of other folks are using. So it's a  
5 nonexclusive license to use that software forever.

6 And here's the thing. Just like when you buy a  
7 new car, you get a warranty for the car, when you license  
8 software from PeopleSoft, you got a one-year warranty.  
9 It's called support.

10 Now, when you're on that one year of support, if  
11 something goes wrong with your software, PeopleSoft will  
12 fix it free of charge. Just like your car breaks down when  
13 it's under warranty you take it back to the dealer and they  
14 fix it.

15 But after that one year, you have to make  
16 choices, and this is all governed by a contract, a contract  
17 between PeopleSoft, or later Oracle, and the customer.

18 And these contracts are going to be really  
19 important, because these contracts lay out exactly what you  
20 can do with the software. It's a license.

21 A license is a copyright owner's permission to  
22 do certain things. It's like a fence defined by that  
23 contract. And as long as you operate inside the fence,  
24 you're okay. If you do something you're not authorized  
25 for, you've crossed the fence. Technically you're

1     infringing the copyright. And that's all governed by these  
2     contracts.

3             And here's something else that's important.  
4     When Mr. Ravin was vice-president at PeopleSoft, he worked  
5     with these contracts all the time. He knew them very well.  
6     He negotiated them and renegotiated them. And he  
7     understood these contracts had a lot of different  
8     provisions but a few that were the same, one to the next.

9             And this was one of them. This may be one of  
10    the most important pieces of evidence in this entire case.  
11    Because of this, companies like Rimini Street can exist.  
12    It says that you have the right to have someone other than  
13    us work on your software. You have the right to have a  
14    third party work on your software.

15            For example, just like your car. Let's say your  
16    warranty expires. You can go back to the dealer and extend  
17    your warranty, or you could take it to your trusted  
18    mechanic just down the street, the guy you know is going to  
19    do a good job and treat you right. Or, if you're really  
20    handy, you can just fix your car yourself. And, finally,  
21    if you really are tired of your car, just trade it in on a  
22    new one.

23            The same options apply to software users. You  
24    can go back to the dealer, in this case it's going to be  
25    PeopleSoft or Oracle.



1           You could go to a third party, one of the  
2 folks -- one of the companies out there that provide  
3 service on software. Those are third parties. Rimini  
4 Street is one of those.

5           You could do it yourself. It's called  
6 self-support. Or just get new software.

7           At expiration of that one-year period, every  
8 customer has those options.

9           All right. Back to PeopleSoft and Mr. Ravin.  
10 Things were good. They were making good money on licensing  
11 that software; but, ladies and gentlemen, they were making  
12 a killing on that maintenance business. And here's why.

13           You heard from Mr. Isaacson after that one year  
14 is up, if you want to go back to Oracle or PeopleSoft, you  
15 got to buck up 22 percent of your purchase price.

16           Let's say you buy a car for 10 grand. We all  
17 know that's not possible, but let's say you could. If you  
18 wanted to extend your warranty for oil changes and tire  
19 rotations, that would be \$2,200.

20           Mr. Ravin worked with these clients. He  
21 understood their situation. And they weren't very happy  
22 about this. They were getting charged more and more money.  
23 They were perceiving they were getting less and less. They  
24 weren't getting the value.

25           And then there was this. Every now and then

1 companies come up with upgrades, a new version. Your  
2 contract with Oracle provides you that fence for your  
3 version. If you want the new version, the upgrade, you got  
4 to pay more money. And then you got to pay the maintenance  
5 fees on top of that going forward.

6 Now, it could be that you're perfectly happy  
7 with your software, it works fine. You know how to use it.  
8 It works just right for your business. You don't want an  
9 upgrade.

10 So here's what PeopleSoft did. They said, fine,  
11 you can keep your software, use it as long as you want, but  
12 you should know we're no longer going to service your old  
13 version. If it breaks, too bad. If you need new parts,  
14 tough noogies. It's called a forced upgrade.

15 And while customers were generally dissatisfied  
16 with the pricing, they were really upset with this, and  
17 Mr. Ravin saw that.

18 And while times were good and people at  
19 PeopleSoft were walking in high cotton, Mr. Ravin looked on  
20 the horizon and he said there's a storm cloud, he said,  
21 because customers are unhappy, and he knew that they all  
22 had a choice.

23 If they didn't up their game, if they didn't  
24 treat these folks right, if we didn't give them value,  
25 they're going to vote with their feet.

1           So he did two things. First of all, he  
2           initiated an extended support platform, a new program that  
3           allowed customers to extend their version. They could pay  
4           a little extra money and get a longer life of their version  
5           before they had to upgrade. Customers really like that.

6           But then he did something else. He went to his  
7           bosses, he went to his executives, and he told them his  
8           concerns. He said, "Listen, this golden goose will no  
9           longer lay golden eggs if people march out the door, we've  
10          got to do better, we've got to create more value for our  
11          clients."

12          And this may be the most important moment in the  
13          history of this dispute right there. You see, because his  
14          executive team, we're at a cross-roads. They could have  
15          said, "You know what, Seth, you're right, we should do  
16          better for our clients, we should do away with these forced  
17          upgrades, we should give our clients better value because  
18          in the long term that will be much more successful."

19          Is that what they did? No.

20          They said, "Seth, if it ain't broke, we're not  
21          going to fix it." They just kept marching down the same  
22          path, the same path that increased revenue and forced  
23          upgrades.

24          And that's not all they did. You know that  
25          extended platform that Mr. Ravin developed? They pulled

1 the plug. They found out that it was reducing the forced  
2 upgrade money, and they ceased the program.

3 Mr. Ravin was very unhappy, so unhappy that he  
4 quit. He quit PeopleSoft and went to work for another  
5 software company.

6 In this case, you'll hear that he went to other  
7 software companies, and maybe you'll hear more about those.  
8 But he left PeopleSoft because they refused to take care of  
9 the problem that he solved, a market opportunity that they  
10 created with their own business practices.

11 All right. I want to now fast forward a couple  
12 years. There's a seismic event happening in the enterprise  
13 software business, and that seismic event is centered in  
14 Redwood Shores, California, at the headquarters of Oracle.

15 You've heard about Oracle in this case. They  
16 are a company that started in 1977 and grew rapidly through  
17 acquisitions of companies and identifying opportunities in  
18 markets.

19 And in the middle of 2000, they identified their  
20 next opportunity, enterprise software. It saw a few  
21 companies out there that are engaged in this business, and  
22 they had lots of really good customers that Oracle wanted,  
23 and then they saw this. They saw the gravy train that is  
24 maintenance revenue.

25 And so they decided to go on a buying spree.

1 First, they bought PeopleSoft, and, in so doing, they also  
2 acquired J.D. Edwards, a company that PeopleSoft had  
3 earlier acquired.

4 Then they bought Siebel, another software  
5 company, giving them the three companies, the three  
6 products at issue in this case.

7 Now, you heard about the need for research and  
8 development. A couple things. They paid \$16 billion for  
9 those companies. The evidence in this case will show you  
10 that they've been profiting, profiting over 10 billion,  
11 billion, a year on just the maintenance revenue. They've  
12 recouped that investment many times over.

13 Here's something else. They didn't write that  
14 software, they bought it by buying another company.

15 Back to Mr. Ravin. He recently had left a  
16 company that he had worked with, and he noticed that that  
17 opportunity was still there. The opportunity that he saw  
18 at PeopleSoft and brought to his executives' attention was  
19 still there. And he decided if not me, who? And if not  
20 now, when?

21 He decided he would take the dive and create his  
22 own company from the ground up, not an existing company to  
23 try to retrofit, but something that would achieve his  
24 vision, because he knew that there was a market opportunity  
25 for competitors, third parties in this space.

1           So when a customer had that choice to make, they  
2           had that choice available to them.

3           And he also knew this. If he could provide the  
4           same service as the dealer, as Oracle, and do it for a  
5           lower price and give customers world class service, that  
6           was a formula that could not fail.

7           So he decided to start his own business, a  
8           business that would be called Rimini Street.

9           Mr. Ravin took his life savings and invested it  
10          in this new company, his vision. Then he went to his  
11          family and shared with them his vision for this company.  
12          They were enthusiastic, and they too contributed to this  
13          new business.

14          Now, you've heard already that Mr. Ravin built  
15          this company on infringement to violate Oracle's rights  
16          willfully. But you'll hear from Mr. Ravin on the stand,  
17          he'll tell you that's the last thing he wanted to do.

18          When you start a new business, the last thing  
19          you want to do is step on the toes of another company, let  
20          alone Oracle.

21          He was careful. He was confident that what he  
22          could do was legitimate. Why? He knew those contracts.  
23          He worked with those contracts. He understood those  
24          contracts.

25          And, you know, while I talked earlier about a

1 license for an agreement being a square simple box. Well,  
2 these are complicated licenses, and the fence isn't  
3 necessarily square, it's a complicated commercial  
4 agreement.

5 But Mr. Ravin was confident that third-party  
6 business was permitted. It was inside the fence, and so  
7 long as you stayed inside the fence, you would be fine.

8 Here's what else he knew. He had been in this  
9 business a long time. Other companies, other third parties  
10 were operating in this business, and he understood so long  
11 as he kind of stayed with what they were doing, he would be  
12 fine.

13 And finally he knew this. Back when he was at  
14 PeopleSoft, they never once objected to a third party  
15 providing maintenance.

16 So armed with that information, launched his  
17 business. He launched his business September 2005.

18 Now, you may be asking yourself how is it that  
19 Rimini Street can do this without having a license directly  
20 with Oracle. The answer to that lies with those contracts  
21 I talked earlier.

22 Rimini Street stands in the shoes of its client.  
23 If the clients have the right to do something on their  
24 software, the client can do something in here, Rimini  
25 Street can too. If the client is authorized, then Rimini

1 Street is authorized.

2 A couple of important facts. Rimini Street  
3 doesn't sell software. It does not sell Oracle software.  
4 It never has. It just fixes it.

5 It's not for the making of the car. Rimini  
6 Street is the mechanic down the street fixing it when it  
7 breaks.

8 Another thing, Rimini Street is only given  
9 access to its clients to diversions they've licensed. We  
10 talked earlier about those upgrades? If one of its clients  
11 is not licensed to the upgrade, they don't get it.

12 Every client has already paid Oracle in full for  
13 these licenses. They've already paid Oracle good money to  
14 have the right to use those licenses.

15 And, finally, no Rimini client gets something  
16 that they're not entitled to receive under their agreement  
17 with Oracle.

18 So what does Rimini Street actually do?

19 First of all, product support. If you have a  
20 problem with your product, you call Rimini Street, they'll  
21 walk you through the problem.

22 Fixes. If your software breaks, you call them  
23 up, and either they'll walk you through the fix or they'll  
24 access your software over the Internet and fix it for you.

25 And maybe this is the biggest one. Tax and



1 regulatory updates. Let's say you're operating business in  
2 many states, and in one state the tax withholding changes.  
3 Rimini has a team of engineers who constantly research  
4 looking for changes in the law. When they find one, then  
5 another team will figure out which of these clients will  
6 this impact and how can we fix the software.

7           It's a huge operation. Rimini Street invests  
8 tons of money in that aspect of their business. They'll  
9 help you install your software, make sure it works with  
10 other software in your business. They will tune your  
11 software, and it will provide assistance for you if you  
12 ever want to update.

13           So Rimini Street launched in September 19, 2005.  
14 Two weeks later, it gets a letter from Siebel. Remember,  
15 Siebel was in the process of being processed by Oracle at  
16 this time, and they sent Rimini Street a letter saying we  
17 hereby demand that you cease your wrongful activities.

18           Ladies and gentlemen, at that time Rimini Street  
19 had precisely zero clients. It had not done anything, yet  
20 they get this letter. Mr. Ravin was surprised.

21           He hired his own lawyers to respond to this  
22 letter addressing point by point why these guys were wrong,  
23 and they ended every letter with this "Why don't we just  
24 sit down and talk about this? Why don't we sit down across  
25 the table, you tell us what you think is wrong, and we'll

1 see if we can fix it."

2 Oracle rejected that. They said, "We're under  
3 no obligation to advise your client in even more detail  
4 what it must do to avoid engaging in unlawful conduct."

5 Over the next five years, letters were being  
6 exchanged, accusations from Oracle, responses from Rimini  
7 Street, and every response ended with "Let's sit down and  
8 talk about this, this is silly." Never was that accepted.

9 Despite these letters, Rimini Street had to  
10 build the business. And early on times were tough.

11 Mr. Ravin did not take a salary for two years at  
12 this company. Every dime that was made went back into the  
13 company. And times were very difficult because you had to  
14 convince someone -- you had to convince someone that they  
15 could be the guinea pig for your new business. No one ever  
16 wants to be the first one.

17 And they had to cut some sweetheart deals to get  
18 clients in the door because they knew this, the sample  
19 would sell the loaf. They knew if they could demonstrate  
20 they were good, other customers will follow.

21 Now, this was a startup business. Like many  
22 startup businesses, folks are wearing a lot of hats. And  
23 early on the processes were not very refined, and early on  
24 things could have been done a lot better. We're not going  
25 to deny that.

1 Over time things got better and more refined.  
2 But it wasn't intentional. It certainly wasn't aimed at  
3 hurting anyone.

4 And they got some success. Early on they got a  
5 few clients, and they demonstrated to those clients that in  
6 fact they could -- they could do quality work.

7 Oracle will tell you that the reason Rimini  
8 Street succeeded was because of our 50 percent cut-rate  
9 pricing and because we infringed; but, once again, the  
10 facts will not marry up to what they told you.

11 The reason Rimini Street was successful was  
12 because of their secret sauce; their secret sauce.

13 What was that? Service. It was that thing that  
14 Mr. Ravin identified was missing and lacking with the  
15 PeopleSoft models. He knew what we all know, people want  
16 to be treated well. They want to feel appreciated, and he  
17 knew that could be the focal point of everything they do.

18 You'll get to hear from Mr. Ravin and other  
19 employees at Rimini Street, and they will all tell you the  
20 same thing, that is the focal point of everything they do  
21 because that makes a difference.

22 Nowhere is that more clear than with the primary  
23 support engineers at Rimini Street, the PSEs. We'll have  
24 one of them take the stand. And that engineer will tell  
25 you exactly what she does in her job. You'll see how

1 important it is to her, how passionate she is about her  
2 job.

3 When you sign on with Rimini Street, in that  
4 contract you're guaranteed a named PSE. You have their  
5 name, their phone number, their e-mail address.

6 You call that person any time, night or day, any  
7 day of the year, and you're guaranteed in that contract  
8 that they don't answer that phone, you get a call back in  
9 30 minutes. In practice, you get a call back in three and  
10 a half minutes.

11 Let me tell you this. When your software  
12 crashes, and you've got to make payroll that day, and if  
13 payroll doesn't come out, people don't pay their rent,  
14 that's a big, big deal, and Mr. Ravin knew it.

15 Here's something else. Every person at Rimini  
16 Street, from the person right off the street hired on to  
17 sort mail, to Mr. Ravin, and including Mr. Ravin himself,  
18 their compensation is based upon customer satisfaction.

19 Every customer, after an exposure to one of our  
20 employees, get a survey. They respond to that survey, "How  
21 was Bob? Did he meet your expectations? Are you happy  
22 with your service?"

23 On a scale of 1 to 5, Rimini Street averages 4.8  
24 with its customers.

25 Rimini Street, in fact, succeeded because of its

1 special sauce, and that's what the evidence will be in this  
2 case.

3 Now, this was not a pleasant event for Oracle.  
4 They didn't really care for the fact that Rimini Street was  
5 succeeding.

6 This is an e-mail from Juan Jones, an executive  
7 at Oracle. He says, "F Seth and his Rickety Street which  
8 has yet to be paved. Let's ensure we don't overreact to  
9 these gnats, insects, bugs."

10 Well, hardly a Rickety Street. Rimini Street  
11 has been certified under not one but two ISO standards for  
12 global quality and for information security.

13 The ISO certification process is very difficult.  
14 Only a few companies ever pass their requirements, because  
15 you get audited. You get audited to make sure you're still  
16 complying. And Rimini Street has been audited multiple  
17 times, and they have a perfect score on every audit.

18 The evidence will be that Rimini Street was, in  
19 fact, well received by clients. These are sophisticated  
20 clients that signed on with Rimini Street. And that's  
21 important to understand something.

22 It's a big deal to take your software  
23 maintenance from the vendor to someone else, because if  
24 something goes wrong, there are consequences. You might  
25 lose your job.

1           These companies are risk averse. They're not  
2 going to take this business and send it to someone unless  
3 they're sure they can do a good job. And these are just a  
4 few of the companies who have made that decision.

5           Now, Oracle did not ignore those gnats, they  
6 sued them, which brings us to this lawsuit.

7           You're here today to answer some important  
8 questions about the allegations in this lawsuit. Oracle  
9 has made a bunch of allegations and a bunch of claims, but  
10 most of them center on really one thing: Did we make  
11 unauthorized copies.

12           We'll show you in this trial, while we believed  
13 what we were doing was perfectly legitimate, perfectly  
14 within the scope of those licenses, there are others issues  
15 that you have to decide for yourself the judge hasn't  
16 already decided, and we're going to put witnesses on the  
17 stand to help you along the way.

18           But we're going to start with our central  
19 truths. And you'll hear this again throughout this case  
20 and in closing.

21           First of all, customers have the right to choose  
22 Rimini Street. The contracts provide that they can go to  
23 someone other than Oracle if they want their software  
24 maintained, and Rimini Street has signed contracts with its  
25 customers where they authorize them to do just that.

1           Second truth. The Rimini process did not  
2 actually cause Oracle any harm.

3           Now, we're going to explain to you what that  
4 means, because you may be thinking that doesn't sound right  
5 because we just heard that you have tens of thousands of  
6 copies. We'll explain all of that to you.

7           Now, the Court before this case made some  
8 decisions about the scope of the license, and he found that  
9 some of the things that Rimini Street did were not, in  
10 fact, inside the scope of the license. And we talked about  
11 those earlier.

12           Mr. Ravin thought the fence extended way out  
13 there. The Court said, "No, it doesn't. The stuff that  
14 you did in this space is outside the scope of the license,  
15 it's outside the fence."

16           Another spot, same thing. "You're operating  
17 here, Rimini," and even though Mr. Ravin, in his best  
18 faith, thought this is where he could be, he said, "No, the  
19 line is actually there."

20           And here's another space, another disputed space  
21 where Oracle says that we knowingly violated their rights.

22           Now, before I go farther, I have to address one  
23 thing. You can only have your clients called liars just so  
24 many times. Mr. Ravin honestly believed the line was  
25 there. He put his own money, his family and friends' money

1 on the line because he believed that to be true.

2 Years later, the Court found that he was wrong.  
3 But being wrong does not make you a liar.

4 So what did the Court actually find? First,  
5 remote versus local. What does that mean? It has to do  
6 with the location of the software.

7 Now, here's where the car analogy breaks down.  
8 If your car breaks down, you take it to the mechanic, you  
9 drive it down the street, and they fix it. You can't do  
10 that with software. It's running your business, everything  
11 about your business.

12 So the standard practice in the industry is to  
13 make environments, testing and development environments,  
14 exact replicas of what you're running in your business.  
15 That way you can develop fixes and updates on one of them,  
16 test it in the next one, and then move it over to the one  
17 running your business. Those are called testing and  
18 development environments.

19 For some of Rimini's clients they actually  
20 hosted the testing and development environments on Rimini's  
21 computers, on their servers. On others, Rimini Street did  
22 it while the testing and development environments were on  
23 the customer's servers.

24 In this case, the Court said, "When you're on  
25 your servers, that's outside the scope because the scope of



1 the license doesn't extend to your computers. You have to  
2 keep that on the client's computers to be inside the  
3 fence." It has to do with the location of the software.

4 Oracle wasn't hurt one iota by having that  
5 software on Rimini's computers versus the client's.  
6 Everything was done the same way, for the same price.

7 And here's something else you should know.  
8 Rimini gave the clients the option to choose which it was.  
9 Most of the clients chose local, to have Rimini Street host  
10 the software. But some, from day one, had remote. It was  
11 a little easier to do local, but the client said we also  
12 will take remote.

13 What about the next one? Reuse versus rebuild.  
14 Reuse versus rebuild. And what does that mean?

15 Well, when you're doing these tax and regulatory  
16 updates, here's how it works. Let's say that the tax law  
17 changes, it goes from 7 to 8 percent. The Rimini engineers  
18 researching this, they discover it, and they make a fix for  
19 your software to bring your software up to date so when you  
20 issue paychecks, they're in the right amount, and they'll  
21 send that to your software.

22 I want to introduce a new concept. It's called  
23 vanilla software.

24 Some clients get their software and load it up,  
25 and they go, you know what, right out of the box it works

1 perfectly fine for our needs, no need to change it, and  
2 some of these clients have the exact same software.

3 Now, for those clients, we'll have them ship to  
4 us all their DVDs. We'll look through them and compare  
5 them to another one we already have. And if those DVDs  
6 match, and if the licenses of those two clients are  
7 identical, they would basically -- instead of loading these  
8 all over again, they would take the one they already have  
9 and clone it for a new one.

10 That's what happened with the updated piece -- I  
11 mean, I'm sorry, with the installation piece.

12 Now, with the tax updates, it's the same kind of  
13 concept. Let's say you have two clients with the exact  
14 same software, exact same version, same license, same  
15 things. Instead of rebuilding that update for each client,  
16 if they had the exact same software, Rimini Street would  
17 just reuse their own work for the next client.

18 Now, the judge in this case found that that was  
19 improper because you're not using the software for just  
20 that client. When you reuse your work, you're outside the  
21 fence, but if you were to rebuild each one, it's a  
22 different story.

23 The evidence in this case will be that Rimini  
24 Street never did that for clients that had different  
25 versions. If you had a different version, it would not

1 take the software and put it into the next client's  
2 version.

3 Now, customized software. Where vanilla means  
4 everyone has the same thing, customized means something  
5 else.

6 A lot of our clients, as a matter of fact, most  
7 of Rimini's clients, have customized software. It changes  
8 over time. You make enough changes, and before too long,  
9 it's an entirely different looking piece of software. You  
10 cannot use updates from one version to another version. It  
11 doesn't work, and it's outside the scope of the license.

12 For those clients, each one, there would be  
13 individual updates. They would rebuild each of those  
14 updates. They wouldn't reuse them.

15 Rebuild. From day one you'll hear that Rimini  
16 Street remote hosted and rebuilt for the same price. These  
17 other processes were done for efficiency purposes.

18 Now, we're going to shift gears and talk about  
19 another thing. Automated downloading. Let me set the  
20 stage for you on this one.

21 When Rimini Street started this business, it was  
22 perfectly okay to use automated tools for downloading. As  
23 a matter of fact, Oracle recommended it.

24 But once Rimini Street started going and getting  
25 successful, Oracle changed their rules. They changed the

1 terms of use for their website and said no, no, you can't  
2 use that stuff anymore.

3 Initially Rimini said to heck with that, our  
4 clients have a right to do this, you can't change the  
5 rules. So for a period of time Rimini Street continued to  
6 use these automated tools. Eventually, back in 2009, they  
7 stopped, they said it's not worth the trouble.

8 They went to having people individually click  
9 mouses -- mice -- mouses to download software one at a  
10 time.

11 Oracle will tell you that by continuing to do  
12 the automated means versus manual, that Rimini Street  
13 willfully violated their rights.

14 But even they would contend that manually  
15 downloading is okay, and here's why that matters.

16 When you sign up with Rimini Street, they will  
17 first build your environments, but then they'll do  
18 something else. They will download from Oracle's website  
19 all the fixes and files and updates that you're entitled to  
20 as their client, and you're provided that right in the  
21 agreement, all enhancements.

22 Let me tell you what that means. For your  
23 version, there may be thousands and tens of thousands of  
24 files available for you to download. It's your right. You  
25 can do it.

1           Rimini Street will do that for you, and, as a  
2 consequence, sometimes there's a bunch of stuff being  
3 downloaded, a whole lot, one copy at a time, not hundreds  
4 and thousands of copies.

5           But these clients have the right to that  
6 content, and Rimini Street will do it for them. But they  
7 only do it for them before the expiration of their rights  
8 under Oracle's contract, that one-year warranty. That's  
9 the only time they'll do it.

10           So here's what you know. Whether it's remote or  
11 local, same pricing. Whether they rebuild or reuse, same  
12 pricing. Whether it's automated download or manual  
13 download, same pricing.

14           And the purpose of that is this. Oracle wasn't  
15 hurt by this. Rimini could offer all these services within  
16 the fence for the same price.

17           Why in the world then did they use local and  
18 reuse and automated downloading? Simple. Because it's  
19 more efficient. It takes fewer people to do the job.

20           We'll have an expert who will take the stand and  
21 he'll calculate for you what exactly did they save by doing  
22 this, the number of man hours that they avoided spending to  
23 do it this way, and he'll tell you that the total cost  
24 saved was \$9.3 million.

25           I will submit to you that's the maximum that

1 Rimini Street should be made to pay in this case, because  
2 that's what they benefitted from, that's how they  
3 benefitted from using these efficient means. The value of  
4 use is \$9.3 million.

5 Now, Oracle will tell you that the reason Rimini  
6 Street can charge 50 percent is because they infringed,  
7 they cheated, they got a head start.

8 But what you'll hear in this case is that Rimini  
9 Street has just chosen to take a reduced profit.  
10 Forty-four percent is their margin they identified. They  
11 think that's probably good enough, 44 percent margin.

12 And notice something else. The red bar. The  
13 costs that Rimini Street spends on its customers is per  
14 customer larger than Oracle. They spend more money serving  
15 those clients than Oracle does.

16 Which brings us to the third essential truth.  
17 There will be no evidence that these customers would have  
18 stayed and paid with Oracle.

19 How do we know this? We know this because, of  
20 all the customers who were deposed in this case, of all the  
21 documents we've seen, not one has said, yeah, you know  
22 what, if it wasn't for Rimini Street, I would have gladly  
23 stayed with you guys and continued to pay 22 percent per  
24 year.

25 They don't have that proof. This will be a

1 failure of proof, ladies and gentlemen. They don't have  
2 the goods.

3 Here's what these customers said. Brian Baggett  
4 with Bausch & Lomb was asked:

5 "But you ultimately didn't keep support with  
6 Oracle; is that correct?

7 "That's correct.

8 "And what led to that decision?

9 "We felt Oracle capital was unreasonable.

10 "Unreasonable? Can you describe?

11 "In every aspect of the negotiation.

12 "Mr. Baggett, and in terms of other products  
13 in the future, are you considering Oracle as a  
14 viable option?"

15 His answer, "My personal opinion, and  
16 speaking on behalf of the recommendations that I  
17 make within Bausch & Lomb, they're our last  
18 choice."

19 Clark Strong, another Rimini client, was asked  
20 by Oracle's lawyer.

21 "And to what extent was that lower price a  
22 deciding factor in the decision for Birdville to  
23 contract with Rimini Street rather than to renew  
24 with Oracle?

25 "None.

1                   Oracle's lawyer, "The price was no -- no --  
2                   no effect whatsoever?"

3                   His answer, "No."

4                   "Question: So if it had been the same  
5                   price, you still would have contracted with  
6                   Rimini?"

7                   His answer: "That's what I would have  
8                   recommended."

9                   "As you sit here today, does Birdville have  
10                  any plans to go back to Oracle support?"

11                  "I wouldn't recommend it.

12                  "And why not?"

13                  "Because of the support we get from Rimini."

14                  Customer churn. This may be the most  
15                  inconvenient fact for Oracle in this case. Five percent of  
16                  their customers leave every year. It's called churn.  
17                  Every year five percent of these customers leave for one of  
18                  these options.

19                  Only about 12 percent end up going with Rimini.  
20                  You'll have to ask the question to yourselves in this case,  
21                  where are the others going? How can Oracle prove that  
22                  Rimini Street would have gone back to Oracle rather than to  
23                  deal with what these 88 percent of these other folks did?

24                  The evidence will be this, our customers were on  
25                  their way out of the door. We just gave them a place to



1 land.

2 Here's a chart for you. The customer attrition  
3 for Oracle was lower before -- or was higher before Rimini  
4 Street came on the market than it is now.

5 Let me rephrase that. Fewer customers are  
6 leaving now than before Rimini Street even hit the market.

7 And for PeopleSoft, the number one product line  
8 that Rimini Street services, that rate's been cut in half.  
9 Half of the people now are leaving than before Rimini  
10 Street even came on the market.

11 Oracle has not been harmed, and the evidence  
12 will be this. The maintenance revenue for Oracle has gone  
13 up since Rimini Street hit the market. The number of  
14 customers they maintain has gone up since Rimini Street hit  
15 the market, and, ladies and gentlemen, the profits they  
16 make on maintenance have gone up.

17 The judge read some instructions just a few  
18 minutes ago. One of the instructions said that you're not  
19 to decide the verdict until you and the fellow jurors have  
20 completed your deliberations at the end of the case.

21 You shouldn't make up your mind based upon what  
22 you hear from one side because, hear me now, they're going  
23 to come after us with both barrels.

24 They're going to start off, and they're going to  
25 call Mr. Ravin right at the beginning of their case, and

1 they are coming after us. I'm asking you to withhold your  
2 judgment until you hear our side of the story as the judge  
3 has instructed you.

4 But as you hear this evidence, as it starts  
5 coming in, you could take it all and put it into one of two  
6 buckets.

7 The first bucket, real proof. This is the  
8 evidence that you'll need at the end of this trial to  
9 answer some really important questions. This is the  
10 information that will inform you and educate you and guide  
11 you as you make the very important decisions in this case.

12 What's in this bucket? That bucket will have  
13 stuff that's not designed to have you answer questions at  
14 the end of the case. That bucket contains diversions,  
15 assumptions, and accusations.

16 As the evidence comes in you should be thinking  
17 which bucket does it go in? And more than that, why is  
18 that lawyer telling me this?

19 Unfortunately, I do need to clear up a few  
20 things. Now, we're not going to counterpunch everything  
21 they say about us or we'll be here all day, but I do want  
22 to say a few things.

23 First of all, the copies that will stretch  
24 between here and Pleasanton, California. Every day Rimini  
25 Street creates backup copies for its clients, every day.

1       There are thousands of backup copies. And look here.

2               That's okay. We don't use those for our own  
3       purposes, we use those for the clients. What is the  
4       purpose of talking about massive copies? Which bucket does  
5       that go in?

6               Here's something else. You saw the graph of the  
7       spikes, of all the downloading we were doing? Remember  
8       that? We were downloading files for XO, a client we had  
9       just signed, and we had to get all the downloading done in  
10      a very short time.

11              And they blocked us. They blocked our IP  
12      address. We changed it and tried something else. They  
13      blocked it again.

14              So what did we do? We wrote them. This is a  
15      letter from one of our engineers to Oracle saying, "John,  
16      we are helping XO obtain all the software and content that  
17      they're entitled under their current support maintenance  
18      agreement. We understand you've blocked us, therefore we  
19      would appreciate your help to find a solution for XO and  
20      our other clients."

21              You heard how we're deceitful, we're concealing,  
22      we're operating in the shadows. Which bucket does that go  
23      in?

24              Another thing, you'll hear in this case about  
25      how the lines, the lines around this fence were so clear --

1 were so clear that Mr. Ravin could not have possibly  
2 misunderstood where they were.

3 I'll tape this up and get it back to you.

4 But that's not exactly what the facts will show.  
5 This is a letter from one of our own clients saying maybe I  
6 am mistaken -- again, this is the client, this is a client  
7 writing to us saying, "Maybe I'm mistaken, however,  
8 wouldn't Rimini Street create a tax update that could be  
9 shared with other customers who have vanilla instances?"

10 Our client's saying to us why don't you reuse?

11 Here's another client. The client raised  
12 concerns because they were unclear as to why we couldn't  
13 simply develop using other environments we had for other  
14 clients. "Why don't you just cross-use?"

15 Which bucket does that go in?

16 And, finally, the deleted library. You heard  
17 about it from the judge, you heard a lot about it from  
18 them, you'll hear a lot about it in this case. Let me take  
19 a few minutes and tell you what that is all about.

20 When I told you earlier that if we had two  
21 clients with the exact same software, sometimes we'd take  
22 the same version and clone it for them because they had the  
23 same DVDs and same license. We had a repository for some  
24 of those versions for installation media.

25 After that's done, we download from their

1 website all the files and manuals that that client has, and  
2 we've siloed that, and those downloads are not used with  
3 anyone else.

4 Prior to this lawsuit letters were going back  
5 and forth, and at some point the folks at Rimini Street  
6 said, hey, listen, these guys might actually sue us, so  
7 they did something. They issued what's called a hold  
8 notice. They sent out a notice to all the employees saying  
9 don't destroy anything that could be relevant to a case  
10 because Oracle may not -- may need it if they sue us. They  
11 preserved evidence for Oracle's benefit even before the  
12 lawsuit was filed.

13 About two weeks before the lawsuit was filed,  
14 without any notice this lawsuit was coming, one of the  
15 engineers went to their boss and said that installation  
16 repository I just told you about that actually clones the  
17 materials, "we haven't used that for a very long time, why  
18 don't we just delete it? It's taking up too much server  
19 space."

20 The boss responds in an e-mail, "Okay, but make  
21 sure you take a snapshot of what's in the file because we  
22 want to make sure what was deleted."

23 All right. How did Oracle know we did that?  
24 Because we gave them that information. We gave them the  
25 e-mails, and we gave them the snapshot of exactly what was

1 deleted. We gave it to them.

2 Which bucket does that go in?

3 Now, ladies and gentlemen, despite Mr. Ravin's  
4 good faith belief, and despite this understanding of the  
5 industry, I mean, he got it wrong. The judge found in a  
6 few instances where we were operating, the fence wasn't  
7 where we thought it was.

8 We are not here to back away from that. We're  
9 not here to disown that. We're here to be held accountable  
10 for our actions. Despite our good faith, we did not meet  
11 the Court's definition.

12 But when you're evaluating what damages should  
13 be assessed against Rimini Street and my client  
14 individually, you have to look at what's in this bucket,  
15 not this one.

16 But just as Rimini Street is here to be held  
17 accountable, you too have to hold Oracle accountable to its  
18 burden of proof. You can't ask for a quarter of a billion  
19 dollars unless you have the goods to back it up. Hold them  
20 to their proof.

21 But at the end of the trial, we're coming back  
22 to choice. Oracle made the choice to give their customers  
23 the right to choose someone else, and at the end of this  
24 case you'll have a choice on your own. You get to choose  
25 the outcome of this case, and if you focus on the real

1 proof, we have no doubt that you'll get it right.

2 I want to thank you very much for your time.  
3 It's going to be a long three weeks, but we appreciate your  
4 service and your attention. Thank you.

5 THE COURT: Thank you, Mr. Webb.

6 Ladies and gentlemen, as I explained to you  
7 yesterday, our court sessions will go until approximately  
8 2:00 without a lunch break. However, we will take a major  
9 snack break each day, and I've been told the snacks today  
10 consist of fruit and crackers and cheese.

11 I think it's probably best to take that break at  
12 this time. We'll have it delivered to you. You'll have up  
13 to 20 minutes, and if you need a little longer, that's okay  
14 too. And we'll deliver those at this time.

15 Then we'll start with the plaintiffs' evidence  
16 with their first witness when you return, and we'll go  
17 until approximately 2:00 today, give or take, kind of  
18 depending where we are. So at this time we'll take our  
19 break.

20 I want to admonish you, very important, not to  
21 converse among yourselves or allow anyone to discuss this  
22 case in your presence, and to keep, obviously, an open  
23 mind.

24 You've heard opening statements. They are not  
25 evidence in the case. They are designed to give you a

1 sense of where this case is likely to go through the eyes  
2 of the counsel representing each side.

3 So absolutely keep an open mind. It's very  
4 important that you keep an open mind until you've heard all  
5 the evidence. It can only be presented one witness at a  
6 time, one exhibit at a time, and until you have the whole  
7 package, you wouldn't be able to properly do your job.

8 So at this time we'll take our break, and we'll  
9 reconvene, like I said, I'm going to shoot for 20 minutes,  
10 it can be a little shorter, a little longer, depending on  
11 when you're ready.

12 So at this time we'll take that recess.

13 COURTROOM ADMINISTRATOR: Please rise.

14 THE COURT: You may go ahead and step down.

15 (Recess from 10:29 a.m. until 10:51 a.m.)

16 (Outside the presence of the jury.)

17 THE COURT: Have a seat, please. The record  
18 will show that we're in open court, the parties and counsel  
19 are present. The jury is not present.

20 My court clerk was just advising me there was an  
21 issue concerning the use of a proposed physical exhibit  
22 with one of the witnesses.

23 Do you want to outline that for me,  
24 Mr. Isaacson? Or, I'm sorry, Ms. Dunn?

25 MS. DUNN: No problem, Your Honor.



1           So Dr. Davis, who will be our first witness, was  
2 going to, with one of our demonstratives, use the easel and  
3 the demo in hard copy.

4           He's a professor, and so Mr. Isaacson can show  
5 you what that looks like, just to make it easier to explain  
6 some of these concepts which are very complicated to the  
7 jury.

8           I will tell you that most important to us is not  
9 inconveniencing the Court in any way. So if this is at all  
10 problematic, we're happy to have him not do it and only do  
11 it on the screen. But it might be of some assistance for  
12 him to be able to get up and gesture to the boxes and  
13 profess in the way that he is accustomed to doing in his  
14 class.

15           THE COURT: As you know, I do the best I can to  
16 accommodate counsel on how they want to try their cases,  
17 within limits, of course.

18           Our visual equipment in these courtrooms, as you  
19 know, are -- rank at the top, as far as I know, because  
20 they allow for a witness to use the video and make any  
21 alterations and draw diagrams and all of that. And I know  
22 that counsel have been through that, and so I like to use  
23 that to the extent I can.

24           I also understand your exhibit here -- and for  
25 the benefit of the record, you have a poster board that

1 appears to be approximately 36 or 40 inches wide by  
2 probably 48 or 54 inches tall, that is also duplicating --  
3 it duplicates what we have available on the screen.

4 What I don't want, I don't want the witness  
5 stepping down in front of the jury and having the diagram  
6 posted in front of them and diagramming on it when, in  
7 fact, they all have the video screen.

8 But what I will allow, I'll allow it to be used  
9 contemporaneously with what is on the jury's video screen,  
10 and if he wants to place his marks on both the video screen  
11 and the diagram during the course of his testimony, I'll  
12 allow him to do that as long as it's not interrupting  
13 unnecessarily his testimony itself; in other words, have it  
14 be brief or have it done that way. Or if you just want to  
15 use the screen, that's fine too.

16 What I don't want is taking the time to have him  
17 step down in front of the jury and going through the  
18 diagram and creating it in his own hand in many ways.  
19 So --

20 MS. DUNN: That makes sense, your Honor.

21 THE COURT: -- that's my middle ground.

22 Is there any objection to that on behalf of the  
23 defense? And I don't know what may be coming around the  
24 pike from the defense standpoint either.

25 MR. RECKERS: No, Your Honor, no objections

1 to -- whatever works to have an easy, understandable  
2 presentation.

3 THE COURT: All right. Thank you, Mr. Reckers,  
4 I appreciate that.

5 All right. That will be our ruling, and we'll  
6 be ready to go whenever the jury is ready.

7 MS. DUNN: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. RECKERS: Your Honor, we did have one  
10 exhibit that I think we have an objection on that we would  
11 take up before the jury came in.

12 THE COURT: Oh, okay.

13 Ms. Dunn?

14 MS. DUNN: So defense counsel and I have  
15 discussed, we propose to introduce into evidence an exhibit  
16 that actually was shown during opening, it's paragraph 34  
17 of defendant's answer to our compliant. We would seek to  
18 admit it as a party admission.

19 And I believe the objection is under Rule 106,  
20 the rule of completeness, which would -- I'm not actually  
21 certain why the defendants think it applies here since we  
22 do wish to offer the entire paragraph from the answer into  
23 the record.

24 The rule of completeness does not require that  
25 an entire document be admitted. If it required that, we

1 would obviously have even more voluminous reams of paper in  
2 this case than we already do.

3 So in the interest of completeness, we would  
4 offer for admission the entire paragraph 34 of defendants'  
5 answer which gives complete context to --

6 THE COURT: Do you have a printed form that  
7 you could --

8 MS. DUNN: Yes, I do. I can hand it up if that  
9 would help. And to help the Court, it is Plaintiffs'  
10 Exhibit 1482D.

11 (Discussion held off the record.)

12 THE COURT: Okay. Let me hear from you,  
13 Mr. Reckers.

14 MR. RECKERS: Your Honor, with the Court's  
15 permission --

16 THE COURT: I'm sorry.

17 MR. STRAND: Peter Strand, your Honor.

18 THE COURT: Yes.

19 MR. STRAND: Mr. Reckers is going to  
20 cross-examine Dr. Davis, but I drew the short straw on this  
21 objection for the defense, if that's okay.

22 THE COURT: That's fine. Go ahead, please. I  
23 apologize.

24 MR. STRAND: I must admit to a little confusion  
25 about exactly what counsel for Oracle wants to do. I heard

1 just now that they wanted it as an admission. We  
2 originally heard that they wanted to mark that single  
3 paragraph as an exhibit. Where are we?

4 MS. DUNN: So it is marked as an exhibit, 1482D.

5 And I think I should also note, so that the  
6 Court is aware and as you are aware, that this is the  
7 paragraph that appears replicated in full in Dr. Davis'  
8 report.

9 THE COURT: All right.

10 MR. STRAND: I'm not going to object on it based  
11 upon it being in Dr. Davis' report. Here's our problem,  
12 your Honor.

13 Here we start off with -- a long time ago, when  
14 I started doing this, the Court would say thou shalt not  
15 mark as an exhibit a pleading and send it into the jury  
16 room.

17 If that is the Court's view, then we can  
18 dispense with that particular situation right here.

19 As far as I know, there are good and just  
20 reasons for that. One, it is an advocacy piece, it is not  
21 evidence in the lawsuit.

22 If they marked their -- if they mark our answer,  
23 then we're going to want to mark their complaint, we're  
24 going to want to mark all of our answer. That's normally  
25 why the courts say, you know what, we're just not going to

1 do that.

2 So we object to the marking of a single  
3 paragraph out of a 30-page answer completely out of context  
4 as an exhibit to be admitted into evidence to go to the  
5 jury room. It is utterly improper, it's just not a good  
6 idea.

7 Secondly, if they want to read it into evidence  
8 as an admission against a party, that's fine, they can do  
9 that, that happens all the time. We still object to it  
10 being sent back to the jury room.

11 If it is going to be sent to the jury room, then  
12 we -- Your Honor, under Rule 106, for fairness sake, it  
13 needs to be put into context.

14 The context is the answer, the entirety of the  
15 answer. As you might imagine, they don't like the entirety  
16 of our answer, we pretty much like it.

17 At the same time, to be put into context --  
18 because you remember you saw it this morning, it was taken  
19 out of context. We were called liars as a result of what  
20 was said in that paragraph.

21 If that paragraph is read in the context of the  
22 paragraph preceding it and of the allegation to which that  
23 paragraph responds, it is abundantly clear, and will prove  
24 that there was no lie, there was no misstatement.

25 So if we're now going to get into a situation in

1     this trial -- and we're already looking at three weeks --  
2     where we're going to begin arguing about what people meant  
3     in advocacy pleadings, we're going to waste a ton of the  
4     Court's time, a ton of the jury's time.

5             Let them read it in as an admission, let's move  
6     down the road.

7             MS. DUNN: Your Honor, if counsel agrees that  
8     this is an admission, I don't see what his difficulty is.  
9     It is a party admission. It comes in properly under the  
10    rules of evidence.

11            Counsel is misapplying Rule 106. There is Ninth  
12    Circuit case law on this which says that what is necessary  
13    is context. And the context in this case is what is in  
14    that answer applied to the specific issue which is  
15    defendants' claims about siloing and claims about the  
16    library.

17            This is the entire paragraph that is in there.  
18    It is a party admission.

19            With due respect to Mr. Strand's experience,  
20    that is not enough to rely upon here. He needs to cite  
21    some basis in law. The basis he has cited is 106, and he  
22    is incorrect about that.

23            MR. STRAND: And, Your Honor, my only reply to  
24    that is, if they are going to enter as an admission an  
25    answer, a paragraph from an answer, then, by all means,

1 they have to put in the allegation that leads to that  
2 response.

3 MS. DUNN: The paragraph --

4 MR. STRAND: Utterly out of context -- utterly  
5 out of context.

6 MS. DUNN: The paragraph itself includes the  
7 allegation as stated by the defendants.

8 Mr. Strand himself has stood here and said that  
9 he has no problem with this being read into evidence. It  
10 is not a problem with it being admitted into evidence. He  
11 just doesn't want the jury to have it, but we do, and it is  
12 proper for the jury to have it both as a party admission  
13 and under 106, according to the way that that's been  
14 interpreted by the Ninth Circuit.

15 MR. STRAND: Your Honor, if that's the way we're  
16 going to play ball, then there's bunches of things they  
17 said in briefs over the last five years that I'd just love  
18 to put in one-paragraph things and send back to the jury.  
19 Why I think it's a bad idea.

20 THE COURT: Well, I'm going to take a look at  
21 it. Are there particular paragraphs that are redacted here  
22 that you feel tend to cause paragraph 34 to be taken out of  
23 context?

24 MR. STRAND: The immediately preceding paragraph  
25 provides context, Your Honor; the immediately succeeding



1 paragraph provides context; and the allegation in  
2 plaintiffs' complaint, second amended complaint -- excuse  
3 me, complaint provides context.

4 So those three paragraphs. The actual  
5 allegation --

6 THE COURT: All right. I need to review those.  
7 I'm going to reserve ruling on it.

8 I would tell you tentatively that because it's  
9 admissible, I'm inclined to feel that it could be admitted  
10 in a single-page form, but if there are other paragraphs  
11 that place this in context and would cause it to be  
12 confusing in any way, I -- I would not allow that.

13 But I would allow or would certainly consider a  
14 counterexhibit that would show the paragraphs that defense  
15 feels more properly place this in context.

16 But I'm not going to get into a pleading battle  
17 in this courtroom in terms of exhibits. But this -- the  
18 point is that I -- and I recognize that this is a sensitive  
19 point in plaintiffs' case and a sensitive point to defense  
20 as well. So I want to take a careful look at it before I  
21 give you a final ruling.

22 MR. STRAND: Thank you, Your Honor.

23 MS. DUNN: Thank you, your Honor.

24 THE COURT: When do you need a ruling by?

25 MS. DUNN: So we plan to use it in Dr. Davis'

1 testimony, which is upcoming now, and we would plan to move  
2 to admit during that testimony.

3 If Your Honor needs more time to examine the  
4 issue, we can obviously move to admit pending your ruling  
5 during the examination rather than --

6 THE COURT: Okay. I'll allow you to do that,  
7 and that way we can move along.

8 MR. STRAND: Thank you.

9 THE COURT: All right.

10 I'm suspecting the jury may be ready, Madam  
11 Clerk. Why don't you bring them in, and we'll just stay  
12 here and get started.

13 MS. DUNN: Your Honor, let me just clarify -- I  
14 just want to make sure we can show the exhibit.

15 THE COURT: Yes, you can.

16 (Jurors enter courtroom at 11:06 a.m.)

17 THE COURT: All right. Have a seat, please.

18 All right. Ladies and gentlemen, I'll start  
19 with an apology. I told you I expected you would have  
20 crackers and cheese with your bowl of fruit. It's coming a  
21 little later. I just thought it would all be here at one  
22 time. We'll get that straightened out, and I apologize.

23 The record will show we're reconvened in open  
24 court. The jury is all present. The parties and counsel  
25 are present, and plaintiffs' counsel, you may proceed with

1 your first witness.

2 MS. DUNN: Thank you, Your Honor.

3 THE COURT: Ms. Dunn.

4 MS. DUNN: Your Honor, Oracle calls Professor  
5 Randy Davis.

6 COURTROOM ADMINISTRATOR: Please raise your  
7 right hand.

8 You do solemnly swear that the testimony you  
9 shall give in the cause now before the Court shall be the  
10 truth, the whole truth, and nothing but the truth, so help  
11 you God?

12 THE WITNESS: I do.

13 COURTROOM ADMINISTRATOR: Please be seated.

14 Please state your name and spell your last name  
15 for the record.

16 THE WITNESS: My name is Randall Davis,  
17 D-a-v-i-s.

18 COURTROOM ADMINISTRATOR: Please tell us your  
19 city and state of residence.

20 THE WITNESS: I live in Weston, Massachusetts.

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RANDALL DAVIS

called as a witness on behalf of the  
Plaintiffs, was examined and testified as follows:

THE COURT: All right. Go ahead, please.

MS. DUNN: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. DUNN:

Q. Good morning, Dr. Davis. How are you?

A. Good morning. Doing well.

Q. Dr. Davis, tell the jury where you work, please?

A. I'm a professor of computer science at the  
Massachusetts Institute of Technology, commonly called MIT,  
in Cambridge, Massachusetts.

Q. And how long have you been a computer science  
professor?

A. I started working there in 1980, so, frighteningly  
enough, it's been 45 years.

Q. And if you could give the jury a sense of your  
educational background.

A. I got my undergraduate degree at Dartmouth in 1970,  
and then in '76 got my degree in artificial intelligence  
from Stanford.

Q. And over the years, what kind of computer systems or  
software have you worked with?

A. Early on I started in the area of what's called

1 artificial intelligence, which is trying to build programs  
2 that embody certain sorts of intelligence that people have.

3 In more recent years I've gotten very interested  
4 in what's called user interfaces, interesting ways to make  
5 it easy for people to interact with computers.

6 Typical interaction, of course, is a mouse and a  
7 keyboard. It's nice to be able to stop using the mouse and  
8 keyboard occasionally and, say, be able to talk out loud or  
9 gesture or draw. So I've done a bunch of work on what are  
10 called advanced user interfaces.

11 Q. Have you also published articles?

12 A. Yes, more than 100 technical articles over the  
13 years.

14 Q. And is this a list of some of them that we see right  
15 in front of us?

16 A. Yeah. This is a particular list of the articles  
17 that I happen to have published in the area of what's  
18 called intellectual property.

19 About 25 years ago I got very interested in  
20 what's called intellectual property and software.

21 Intellectual property is a legal term for a  
22 certain area of the law in particular, it's the area that  
23 includes copyrights. And I got very interested in what I  
24 saw as some of the difficulties that the law was having in  
25 understanding software as a copyrightable work.

1           So I began studying it. I wrote some papers  
2 about it with some other people. I have one paper in the  
3 *Columbia Law Review*.

4           Perhaps the most interesting thing that I got  
5 asked to do, I was asked to chair a study session at the  
6 National Academy of Sciences down in Washington to study  
7 this question, to put together a group of experts from a  
8 wide variety of backgrounds and perspectives, and to issue  
9 a report that tried to explain something about what was  
10 going on with respect to software and copyright in  
11 particular.

12           That's the one listed in 2000. We called it *The*  
13 *Digital Dilemma, Intellectual Property in the Information*  
14 *Age*, which tried to explain why there was some apparent  
15 difficulties in the law trying to come to grips with  
16 information in digital form.

17       Q.     And you mentioned the term intellectual property.

18           Please explain to the jury what is intellectual  
19 property.

20       A.     My understanding is it breaks down loosely into two  
21 categories, copyrights and patents.

22           Patents you get for inventing widgets, new kinds  
23 of devices loosely speaking.

24           Copyrights covers creative works. So if  
25 somebody writes a book, creates a movie, writes a poem, a

1 play, all sorts of creative things are covered under  
2 copyright. You can copyright your work, and that gives you  
3 rights to it that other people don't have.

4 You have the right to reproduce it, to  
5 distribute it. If it's a play or a movie, you have a right  
6 to display it, to perform it.

7 So there are all these kinds of rights. As it  
8 turns out, software is considered copyrightable as well.  
9 So if you create a program, one where you can protect it so  
10 that other people can't just take it and use it without  
11 your permission if you can copyright your software.

12 Q. And in this case, you are a consultant for Oracle;  
13 is that right?

14 A. Correct.

15 Q. Have you ever consulted for Oracle before?

16 A. No.

17 Q. And in any of your consulting work, have you ever  
18 examined any of the software involved in this particular  
19 case?

20 A. Yes. Several years ago when J.D. Edwards was still  
21 an independent company, I was asked to work as an expert,  
22 an expert witness for J.D. Edwards.

23 There was an issue and contention regarding some  
24 software that J.D. Edwards had jointly developed with  
25 another party, and there was a battle about who had the

1 rights to that software.

2 In order to help come to a decision in that  
3 case, what I was asked to do was examine a body of J.D.  
4 Edwards' software and this other party's software and  
5 compare the two and see to what extent they were the same  
6 or different.

7 Q. And if you could give the jury a sense of your other  
8 work in the field of intellectual property, some other  
9 cases you've worked on.

10 A. Yeah. Probably the most interesting one was several  
11 years ago there was actually a claim by a private company  
12 that a program that they had created had been stolen by the  
13 US Government and put to work by the National Security  
14 Agency, the Defense Intelligence Agency, the Drug  
15 Enforcement Agency.

16 So I and two other people were in the position  
17 of being asked to go examine the National Security Agency  
18 and look on their computers -- oh, and the FBI too. I  
19 forgot about them. Yeah. The FBI was accused of taking  
20 the program.

21 So we had this remarkable experience of going  
22 inside the FBI and looking at their computers, going inside  
23 the NSA and looking at their computers, and trying to  
24 decide whether, in fact, the program that this private  
25 company had created was indeed found on those computers.



1 It was a remarkable experience.

2 Q. Was it? All right.

3 A. It was a remarkable experience, but what you really  
4 asked was, was the program there.

5 It turns out the answer is no. It was one of  
6 those things where it -- there was a program of the  
7 identical name that did something like what the original  
8 one was. So the accusation wasn't crazy, but it turned out  
9 not to be true.

10 MS. DUNN: Your Honor, Oracle moves Professor  
11 Davis as an expert in computer science.

12 THE COURT: All right. The Court doesn't  
13 certify an expert one way or the other, but he has been  
14 qualified to testify in this area, and he may go forward.

15 MS. DUNN: Thank you, Your Honor.

16 BY MS. DUNN:

17 Q. Dr. Davis, let's talk about this case. What were  
18 you asked to do in this case, what was your assignment?

19 A. Well, there were three things as suggested on the  
20 slide. I was asked to examine Oracle's copyrighted works,  
21 PeopleSoft, J.D. Edwards, Siebel, and Oracle Database, so I  
22 could get familiar with their software.

23 And then I was asked to examine material that  
24 had been turned over by Rimini Street, copies of  
25 information that was on their computer system.

1           I think you've heard the term discovery used in  
2 this stuff so far, and my understanding of discovery is,  
3 when there's a lawsuit, one side can ask the other side to  
4 turn over some of its documents so that the other side can  
5 examine them. That's discovery, to my understanding  
6 anyway.

7           And some of the discovery I looked at in this  
8 case was what was on Rimini Street's computer system.

9           I analyzed also how Rimini's system worked, how  
10 they did their work, and I tried to understand whether and  
11 to what degree Rimini Street was copying Oracle's  
12 copyrighted works.

13       Q.     So the jury has already heard a little bit about  
14 PeopleSoft, J.D. Edwards, Siebel, and Oracle Database,  
15 which are the programs you just mentioned.

16           Collectively, are those and others what's known  
17 as enterprise software?

18       A.     Yes, they are.

19       Q.     And please explain why it's called enterprise  
20 software.

21       A.     This is one of those terms that sort of means what  
22 it says. Enterprise software is software that's designed  
23 to work across a large enterprise.

24           So if you've got a big business, if you've got a  
25 big company, a hospital, a government organization, if you

1 have a big organization and you want software that covers  
2 all or almost all of its operations, that's called  
3 enterprise software.

4 So inside a company, for example, I might want  
5 software that handles payroll, that handles ordering  
6 materials, shipping products, dealing with customers,  
7 basically the whole scope of the activities of the  
8 enterprise, that's what enterprise software is supposed to  
9 help you with.

10 Q. And from a technical standpoint, does enterprise  
11 software work in the same way as software that you might  
12 have on a personal computer?

13 A. Yeah. At it's heart, software is software, and  
14 while enterprise software aims for a larger scope of  
15 functionality and a larger scope of users, at its heart the  
16 notion of software operating on a computer is pretty much  
17 standard.

18 I'm going to use this diagram to explain a  
19 little bit about that. And I was here yesterday when you  
20 guys were explaining something about your experience with  
21 computers. So some of what I'm going to say here I think  
22 some of you already know.

23 And I'm going to ask your indulgence for two  
24 reasons. First, because I think it's important that  
25 everybody work from the same background. And, second, it's

1 because I'm a teacher, and I can't help explaining things.

2 Okay. It's just -- I can't help it.

3 So let me try to explain my view of software  
4 that I think is a useful way to think about this stuff.

5 We like to think about it in terms of layers.  
6 The most fundamental layer, of course, is hardware, the  
7 physical machine that you buy.

8 The hardware -- the hardware isn't enough. The  
9 next thing I need on it is an operating system. One of the  
10 common ones these days is called Windows 7. You've  
11 probably heard of it.

12 And the operating system isn't enough because,  
13 if I actually want to do something, then I need  
14 applications.

15 So you may have Word so you can create  
16 documents, write letters, iTunes so you can listen to  
17 music, Skype so you can have conversations.

18 That's a useful way to think about computers and  
19 software in terms of the three layers from the hardware,  
20 the operating system, and the applications, and I think  
21 that's going to be a useful way to go forward thinking  
22 about software as we talk about this stuff.

23 Q. Okay. So how about -- this is personal software.  
24 How about enterprise software?

25 A. Enterprise software at its heart is the same sort of

1 thing. We can talk about having to have hardware.

2 Now, we've used a different icon for the  
3 computer here because typically enterprise software you  
4 need a machine that's more powerful than the thing we  
5 usually have sitting on our desktops.

6 But there's an icon for -- or a logo for an  
7 enterprise software -- sorry, the sort of machine you might  
8 use in enterprise software.

9 So I need some hardware. Then I need an  
10 operating system, of course. Then, on top of that in an  
11 enterprise software operation, I will also need a database,  
12 and then on top of that I need a collection of  
13 applications, and as you've heard in this case, one set of  
14 applications it's PeopleSoft, another is Siebel, another is  
15 J.D. Edwards.

16 Q. So one difference between your slide about personal  
17 software and the one about enterprise software is that it  
18 has a database layer. If you could explain to the jury,  
19 what is the database.

20 A. In simple terms, a database is just a way of keeping  
21 track of information. One place you may have interacted  
22 with a database that you didn't even know about it, because  
23 there's no need to make it obvious, is when you go up to an  
24 ATM, it asks to you type in your account number, and based  
25 on that account number, it looks in its database to find

1 out a whole lot of information about your account, like how  
2 much money have you got, are there limits on the amount  
3 you're allowed to withdraw at any given time.

4 It has a whole record of information about your  
5 account, and, of course, it's a good thing it does so that  
6 it can give you money when you deserve it and gently  
7 caution you about the fact that you may be overdrawing.

8 It's got information about you in that database,  
9 and it helps it to do its business. There are lots of  
10 other examples, of course. This ATM example is a  
11 commonsensical one.

12 Q. If you could explain under applications, what are  
13 those applications and briefly what do each of them do?

14 A. PeopleSoft, as we heard, helps you deal with people,  
15 that is, helps you deal with things like human -- what's  
16 often called human resources in an organization, payroll  
17 and other kinds of things. So that's PeopleSoft.

18 J.D. Edwards helps you with financial and what's  
19 called supply chain management. If you're a manufacturer,  
20 do you have your raw materials, where are they, are they on  
21 site, where are your products, have they been shipped.

22 Siebel is aimed at customer management. Am I  
23 keeping in touch with my customers, how many of them are  
24 complaining, how many are happy, when is the last time I  
25 sent them a letter, stuff like that.

1           And then Oracle Database, as we said here, is a  
2 database which is at its heart just a good way to keep  
3 track of facts.

4           It's not a simple thing because, in a big  
5 organization, there are millions and millions of facts to  
6 keep track of and lots of issues to building a good piece  
7 of database software, but conceptually it's a  
8 straightforward notion.

9       Q.     And in the course of your work, did you learn  
10 whether Oracle holds copyrights to this software?

11      A.     Yes, I did.

12      Q.     And does it?

13      A.     My understanding is they do.

14      Q.     Can you give us an example of a business function  
15 that one of these enterprise software applications would  
16 help a business run?

17      A.     Well, for example, payroll is the obvious one.  
18 Here's an example, a screenshot from a PeopleSoft  
19 application.

20           And this is a little bit complicated, but we can  
21 take it piece by piece.

22           You'll see across the tab -- across the top,  
23 there are a number of tabs there. So this is one of those  
24 multiple displays, if you want to look at it, that allows  
25 you to look at a number of different things.

1           So regarding this particular person, I think --  
2           the name's in the second line there. This would be  
3           information about Casey Chang. This is made-up data, of  
4           course.

5           We can find out where Casey works, some  
6           information about the job, information about his payroll,  
7           his salary plan.

8           But in particular the tab we happen to be  
9           looking at for the moment is the compensation tab which  
10          tells us what Casey's annual rate of pay is, his monthly  
11          rate of pay and so forth.

12          This is the kind of stuff you have to keep track  
13          of, obviously, if you're going to generate paychecks for  
14          people appropriately, or if you're going to keep track of  
15          information that you need in order to make the right  
16          deductions from their paychecks, help them pay their taxes  
17          at the end of the year, and so forth and so on.

18          So this is one easy, common sense example of the  
19          kind of business function that PeopleSoft helps with.

20          Q.     Okay. And once the business installs this kind of  
21          software, how long can they expect for it to run?

22          A.     Well, it would be nice if you could buy software  
23          once and just live with it. We all know it's not true.  
24          Some of you are smiling. We all know this experience.

25          Software doesn't live forever. In fact, it has



1 a frustratingly short lifetime with respect to working  
2 perfectly.

3 What happens -- well, lots of things happen.  
4 These days, one of the more common reasons for software to  
5 need to be changed and updated is new platforms have come  
6 along.

7 Laptops got their start, but now half of us have  
8 tablets or phones, and we say why can't the thing that's  
9 running on my laptop run on my phone too so I could be  
10 mobile and get some work done, and, of course, that's  
11 starting to happen.

12 So software is constantly being changed because  
13 we want it to run in other places. It's constantly being  
14 changed because, alas, there are bugs. Would that it were  
15 perfect from the day it's written. In fact, it isn't.

16 So there are a number of reasons why software  
17 can't just be bought and then used ever after.

18 Q. And, Professor Davis, you were asked to write a  
19 report in this case, and here's some examples of updates  
20 that are in your report. If you could just explain each of  
21 these to the jury briefly.

22 A. Tax and regulatory updates are particularly relevant  
23 to payroll kinds of things. You know every year when you  
24 make out your taxes, you've got to be careful about the  
25 fact that the tax laws have changed.

1 Well, PeopleSoft has to worry about the tax laws  
2 in every state, every county, every city, and probably  
3 several foreign countries as well. So they have a massive  
4 job in keeping up with changes in tax laws and, hence,  
5 modifying software.

6 You've probably heard about break-ins, hackers  
7 who are getting into systems these days. So security is  
8 more and more important. Systems get updated in order to  
9 make sure they're more secure.

10 If you're using Microsoft software, you probably  
11 routinely get updates downloaded to your system that are  
12 about improving its security.

13 We mention bugs. You want to get bugs to fix.  
14 There are bugs that need to be fixed.

15 Sometimes the software engineers, as they're  
16 called, the people who write the software, think of ways to  
17 make it work better so they produce improvements. That's a  
18 nice thing, you want to get those.

19 And, finally, overtime products get enhanced.  
20 I'll use Word because it's a familiar example probably, but  
21 we've probably been through four or five new versions of  
22 Word in the past 10 years. So there was 2003, 2005, 2007.

23 They come out with new versions of the software,  
24 first of all, because they think of new features and new  
25 ways to make it work better, and, second of all, because it

1 really is something useful to you that you may want to use  
2 in your work.

3 Q. And based on your familiarity with Oracle's support,  
4 do all of these things come with Oracle support?

5 A. Yes, my understanding Oracle support supplies all of  
6 these kind of updates.

7 Q. Okay. And for customers generally who are  
8 purchasers of enterprise software, what's the most common  
9 source of support for them?

10 A. My understanding is the most common source of  
11 support is the software vendor because they're in the best  
12 position to understand the product they have created, and  
13 these products can be quite complicated.

14 So you want somebody who knows how to dig in,  
15 make the appropriate fix, not break something else while  
16 you're fixing one thing which is, unfortunately, a common  
17 occurrence.

18 So the vendors who created the software are  
19 typically people who are in the best position to do the  
20 servicing and updating. That's why they're the most common  
21 source of support as I understand it.

22 Q. And, in this case, when we talk about the vendor,  
23 who is the vendor?

24 A. In this case, that would be Oracle.

25 Q. Okay. So switching gears, Dr. Davis. You said that

1 in addition to analyzing Oracle's software, you also looked  
2 at materials on Rimini Street's computer systems to figure  
3 out how their systems work; is that right?

4 A. That's correct.

5 Q. Okay. So this next slide is one that you made. So  
6 I'd like for you to -- it's a little complicated. So if  
7 you could just explain it generally to the jury.

8 My plan is that I'll ask you more about it later  
9 to go through the details, but just give the jury a sense  
10 of what they're seeing here, if you would.

11 A. Yeah. As you've indicated, this is a little bit  
12 complicated. So we're going to take a kind of color-coded  
13 approach to it.

14 In the far left-hand side there are these red  
15 boxes. Those are all information from Oracle, whether it's  
16 coming from Oracle's website, coming from what we've called  
17 installation media, the DVDs, CDs that Oracle sends out  
18 either direct from Oracle or installation media that have  
19 come from the customer.

20 Customers sometimes -- the customer may give a  
21 software support person the installation media. So that's  
22 the left-hand side.

23 Then when we move to the next piece of this, all  
24 of this is inside of Rimini Street. So these are places  
25 inside Rimini Street's computer system where the

1 information from Oracle has been copied.

2 It's used there, and then used to provide  
3 service and support to customers for employee training, for  
4 testing and development of updates. But the basic idea is  
5 Oracle information is copied onto Rimini Street's system  
6 and used in their support operations.

7 Q. Thanks, Dr. Davis.

8 So one of the terms that you mention when you're  
9 just describing this is the term copying. And I think the  
10 jury already knows that's going to be a big concept in this  
11 case. So let's focus, if we would, on copying.

12 In your analysis, did you determine whether  
13 Rimini Street had copied Oracle's copyrighted software and  
14 support documents onto their own computer systems?

15 A. Yes, they did, and they copied massive amounts of  
16 those documents and software programs.

17 Q. Okay. So when you say "massive amounts," I'd like  
18 for us to give the jury some sense of what that actually  
19 means. So if you could break it down for them, that would  
20 be very helpful.

21 A. Yeah. There are five categories of copying that we  
22 found as suggested by this slide. We described it very  
23 briefly initially.

24 There's the copying of Oracle documents into  
25 what was called Rimini's software library.

1           There were these things that Rimini called  
2 environments.

3           There were backup copies, copies made of  
4 information on the Rimini disks that was to be put aside.

5           There was what's called RAM copies, and there  
6 was a lot of support documentation that was also copied.

7           So there are these five categories.

8       Q.     Great. So let's start at the bottom with the  
9 software library. What was the Rimini Street software  
10 library?

11     A.     My understanding is the software library was a  
12 location on Rimini Street's computers where Oracle software  
13 and support documents were copied for use internally at  
14 Rimini Street.

15     Q.     And was it a physical library or is it a library on  
16 a computer?

17     A.     No, this is a digital library. This is a place  
18 where the information from DVDs and CDs or information  
19 downloaded from the Oracle websites was then written onto  
20 Rimini Street's hard drives.

21     Q.     And where does the term software library come from?

22     A.     It actually comes from Rimini Street personnel  
23 themselves. This is how they referred to this location.

24     Q.     And, if you know, please explain how Oracle's  
25 copyrighted software got into Rimini's software library.

1       A.       Well, from what I understand, they took, for  
2       example, the physical CDs and DVDs which they either got  
3       from Oracle or got from Oracle's customers and copied those  
4       onto their disks.

5       Q.       And which applications, if you know, were contained  
6       in the software library?

7       A.       From the examination of materials that I've done, it  
8       looks to me like all of the products we're talking about,  
9       PeopleSoft, J.D. Edwards, Siebel, and Oracle Database, were  
10      all copied there.

11      Q.       What else was in there, anything?

12      A.       There was also support information. By support  
13      information, I mean manuals, hints about troubleshooting,  
14      installation instructions. So there's a great deal of  
15      different kinds of information that was in there.

16      Q.       And when you talk about support materials, what  
17      precisely do you mean?

18      A.       One example of support material would be  
19      documentation, how you use the program.

20      Q.       I'd like to show you now what's been marked as  
21      Plaintiffs' Exhibit 1482D. And you should have a binder of  
22      exhibits there that you can look up.

23      A.       Yes, I have it here.

24      Q.       Professor Davis, do you recognize this?

25      A.       Yes.

1 Q. Okay. What is it?

2 A. It's a document that Rimini Street filed with the  
3 Court.

4 MS. DUNN: Your Honor, plaintiffs move 1482D as  
5 a party admission and seek to show it to the jury on the  
6 screen. We move it pending your future ruling.

7 THE COURT: All right. And the Court will give  
8 you a future ruling on that. You may have Dr. Davis refer  
9 to the content of the specific paragraph, and I'll rule  
10 with regard to the remaining questions at a later time.

11 MS. DUNN: Thank you, Your Honor.

12 BY MS. DUNN:

13 Q. Dr. Davis, you just testified that this is something  
14 that Rimini Street filed with the Court; is that right?

15 A. Yes.

16 Q. Okay. And is this also quoted in your report?

17 A. Yes, it is.

18 Q. Okay. Based on their court filing; right?

19 A. Yes.

20 Q. So if you could look --

21 MS. DUNN: And if we could get this on the  
22 screen for the jury, that would be great, Matt. Thank you.

23 BY MS. DUNN:

24 Q. Dr. Davis, if you would start reading in the middle  
25 of the paragraph.



1 A. With the sentence that starts with --

2 Q. That starts, "Oracle states that." You can start in  
3 the middle.

4 A. Okay.

5 "Oracle states that Rimini Street has stockpiled  
6 a library of Oracle's intellectual property to support its  
7 present and prospective customers. Such a library has  
8 never existed at Rimini Street, and Oracle is aware of that  
9 fact and could easily have confirmed it by simply accepting  
10 Rimini Street's offer of third-party verification."

11 Q. So Rimini Street said in its court filings that such  
12 a library never existed at Rimini Street. Is that  
13 consistent with what you found?

14 A. No, it is not.

15 (Discussion held off the record.)

16 BY MS. DUNN:

17 Q. So Rimini Street said in its court filing, that the  
18 library, quote/unquote library, has never existed at Rimini  
19 Street. Dr. Davis, is that consistent with what you found?

20 A. No, it's not.

21 Q. Okay. Please explain.

22 A. In looking over transcripts and documents, there was  
23 reference to a software library, and, importantly, there  
24 was reference to the fact that information was being stored  
25 in a way that was not customer specific, which is my

1 slightly more precise term for what they are calling  
2 siloing.

3 So, in fact, I did not see this strict  
4 segregation by client, I saw software stored by  
5 application, not by client.

6 Q. Okay. So focusing you on the second part of this  
7 paragraph, when they say the library has never existed, you  
8 found that that was not the case?

9 A. Not according to the documents that I examined.

10 Q. Okay. So I'd like to focus you now on the first  
11 part of this paragraph, and if you could read beginning  
12 from "Oracle is further aware," those two sentences.

13 A. "Oracle is further aware that each of Rimini  
14 Street's clients has a unique data silo for storing Oracle  
15 software and support materials. Therefore, the clients'  
16 Oracle software and support materials are not physically  
17 commingled together."

18 Q. And I think you suggested this in your last answer,  
19 but can you explain to the jury whether your findings were  
20 consistent with Rimini's claim of siloing?

21 A. No, they were not. As I said earlier, the  
22 information available to me indicated that applications  
23 were stored by application, not by separate client.

24 Q. And did you see any evidence that Rimini kept track  
25 of who checked things in and out of the software library

1 and for what purpose they did that?

2 A. No, I didn't, because that's a plausible response.  
3 Yes, they were there by individual application, but we  
4 always kept track of who used which application and made  
5 sure that only people who were allowed to use a particular  
6 application got access to it.

7 But in nothing that I saw, there were no  
8 documents, there was no indication that there was a way of  
9 keeping track of who was getting access to which of those  
10 applications.

11 Q. Thank you, Dr. Davis.

12 I'd like to show you now Plaintiffs'  
13 Exhibit 3510.

14 A. Yes, I have it.

15 Q. It should be right here.

16 Okay. Do you recognize what this is?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's another document filed by Rimini to this Court.

20 MS. DUNN: Your Honor, we move Plaintiffs'  
21 Exhibit 3510 and ask permission to show the jury an excerpt  
22 from page 6 of 3510.

23 THE COURT: All right.

24 Defense?

25 MR. RECKERS: No objection, Your Honor.

1 THE COURT: Pardon?

2 MR. RECKERS: No objection.

3 THE COURT: All right. It is admitted.

4 (Plaintiffs' Exhibit 3510 received into  
5 evidence.)

6 MS. DUNN: Thank you.

7 BY MS. DUNN:

8 Q. Dr. Davis, you said that this was also part of a  
9 filing that Rimini filed with the court. Is this  
10 reproduced in your report?

11 A. Yes, it is.

12 Q. Please explain to the jury what they're seeing in  
13 this slide.

14 A. Well, again, this is extracted from a document that  
15 Rimini Street itself filed with the court, and what you're  
16 seeing here is a particular listing of what are sometimes  
17 called folders or directories. If you're used to a Windows  
18 system, you may recognize some of this notation. It's  
19 basically a way of saying where information is being stored  
20 on the disk.

21 So there were folders called -- there was a  
22 folder called "client\_software," and within that one there  
23 was a folder called "PeopleSoft."

24 So you can read each of these as specifying a  
25 location on the disk just the way that you're probably used

1 to specifying locations on the disk in your own personal  
2 computer.

3 Q. And so is this -- is this the library?

4 A. This is what I understand to be the library.

5 Q. Did you examine the contents of the library?

6 A. No, I did not -- I was not asked to examine the  
7 contents of the library. And the other problem was by the  
8 time I became involved with the case, part of the library  
9 had been deleted.

10 Q. Okay. Professor Davis, let's move to the second  
11 category of copying that you found, Rimini environments.  
12 What are environments?

13 A. Environments happens to be a term that the Rimini  
14 folks themselves selected to indicate what's shown here,  
15 working copies of Oracle software on Rimini's systems.

16 So it's two pieces to that. It's working copies  
17 of Oracle software. So they would take something like  
18 PeopleSoft and install it so that it was ready to run and  
19 it was usable.

20 The second half of it is they were doing that on  
21 their systems. So an environment, as the term's going to  
22 get used here, is an installation of Oracle software on a  
23 Rimini Street computer.

24 Sometimes, to be a little more precise, we may  
25 refer to a local environment which is just the way of

1 emphasizing that it's sitting there, not necessarily  
2 physically local, but local meaning Rimini Street.

3 Q. And of the application software at issue in this  
4 case, PeopleSoft, J.D. Edwards, and Siebel, for which of  
5 these programs did Rimini Street have local environments on  
6 its own computer systems?

7 A. They had local environments for all of those.

8 Q. In the course of your work, did you find out how  
9 many local environments that Rimini had of those Oracle  
10 copyrighted works?

11 A. Yes, I did.

12 Q. Okay. How many?

13 A. Well, here's the count shown on the next slide. And  
14 notice the title here. These are Rimini's admitted  
15 copying. These are the number of copies that they agree  
16 they made onto their system.

17 So there were 10 for J.D. Edwards, 381 for  
18 PeopleSoft, 87 for Siebel, so we get a total of 478  
19 environments which involved copying Oracle software onto  
20 Rimini systems.

21 Q. Okay. What about Oracle Database?

22 A. In addition, as shown on the next slide, they --  
23 Rimini acknowledges 216 copies of Oracle Database that they  
24 had made on their systems.

25 Q. Okay. So if Rimini Street has at least 478 local

1 environments, does that mean that it needs 478 computers?

2 A. Luckily, no.

3 Q. If you could explain that to me and everyone else,  
4 that would be great.

5 A. That's the next piece of technology we need to talk  
6 about.

7 I've gone back to the slide I showed you a  
8 couple minutes ago to emphasize this notion of software as  
9 being put together in layers, because what we're going to  
10 do is add another really interesting kind of layer.

11 Next slide.

12 There is a program that some of you may have  
13 heard of called VMWare. Its job is basically to allow your  
14 computer to act like a whole different computer.

15 So once I install VMWare, then inside of it I  
16 can put a new operating system, and I can put a database,  
17 and I can put a set of applications, and now I have on my  
18 computer a second computer that is an installation, let's  
19 say, of a particular version of PeopleSoft.

20 Now, the remarkable trick I can then do is to  
21 put two VM installations on my computer. These are called  
22 virtual machines. We call them virtual machines because  
23 they're not physical machines.

24 I know this is a little confusing. One way to  
25 think about it is imagine you have an actor who is very

1 good at playing parts, and I want an actor who can play  
2 Romeo in *Romeo and Juliet*, and I want an actor who can play  
3 Hamlet.

4 I might have one person who I can say now be  
5 Hamlet. Terrific. Now, be Romeo. Okay, terrific. Even  
6 though it's the same physical person, they can act like  
7 somebody else.

8 That's the kind of thing that's going on with  
9 virtual machines. I can have the same virtual machine --  
10 the same physical computer act like different other  
11 computers, and because it's just a program on that machine,  
12 I can, in fact, put multiple virtual machines onto one  
13 physical machine, all of which is a kind of longwinded  
14 answer to the question of do I actually need 478 different  
15 physical computers. Luckily, the answer is no because we  
16 can get one computer to act like multiple computers.

17 Q. And why would you want that?

18 A. Money. Time. Effort. I don't want to go out and  
19 buy 478 different computers, and, by the way, you don't  
20 have the money to go out and buy 478 computers, and, as  
21 some of you may know, I don't want to have to manage 478  
22 separate physical machines because that's a lot of work.

23 So the notion of virtual machines is a commonly  
24 accepted one in the industry. It's a great way to save  
25 time and money.



1 Q. And did each virtual machine contain one  
2 environment?

3 A. Yes, that's the way that we're using it here, one  
4 environment per virtual machine.

5 Q. And you testified earlier that one environment is a  
6 working version of the Oracle software; right?

7 A. Yes, that's correct. It is an installation, and we  
8 call it an environment, and environment because it's a  
9 working version of the software.

10 Q. Okay. So each virtual machine has one environment,  
11 and each environment has one working version of the Oracle  
12 software.

13 Were you then able to determine how many Oracle  
14 copyrighted files were copied into each environment?

15 A. Yes. We took the original Oracle software and used  
16 a program that examined those files, the Oracle original  
17 files, and examined the virtual machines, which is  
18 something we got access to as part of the discovery.

19 And it's important to note that the kind of  
20 matching that we tried to do, we've tried to ask does this  
21 file from Oracle show up in one or more of the virtual  
22 machines, is that we limited the matching to an exact,  
23 precise verbatim match.

24 So if, in putting the file onto the Rimini  
25 Street virtual machine, they changed one character, we

1 didn't catch that. Change one character from a period to a  
2 comma, and it wouldn't get caught.

3 So these are absolutely literal, character by  
4 character, identical files on the Rimini Street systems.  
5 And so we did that to count up how many we found.

6 And let me explain what's going on on this  
7 graph.

8 Each of these bars is one of those environments.  
9 So we examined 21 different environments, and we said how  
10 many Oracle files were found identical in these  
11 environments.

12 I didn't say that very well. Let me say that  
13 again.

14 How many Oracle files were found to had been  
15 copyrighted verbatim from Oracle software and disks on to  
16 each of these individual environments. And the answer  
17 ranges from about 800 at a low to this ceiling-busting  
18 16,000 that's about five bars in.

19 The take-away message here is that every one of  
20 the environments has somewhere between 800 and several  
21 thousand Oracle files copied verbatim into it.

22 Q. And were these all on Rimini Street's computer  
23 systems?

24 A. Yes, we're talking about looking at Rimini Street  
25 environments. These are all Rimini Street environments.

1 They are Rimini Street's computer systems.

2 THE COURT: Excuse me. Ms. Dunn, I -- because  
3 there's specific information contained on this particular  
4 slide, I think we should have an exhibit number for the  
5 benefit of the record.

6 MS. DUNN: Absolutely, Your Honor. We will find  
7 where we are in the --

8 THE COURT: Where you have anything with  
9 specific information such as this, I think for the record  
10 we need some kind of an identification of the exhibit  
11 number.

12 MS. DUNN: Absolutely.

13 While we figure that out, your Honor, would you  
14 like us to --

15 THE COURT: You may go ahead. I'll just refer  
16 to this as the one that's entitled the environments  
17 containing exact copies.

18 MS. DUNN: We can start this one at PTX 6000.

19 THE COURT: All right.

20 COURTROOM ADMINISTRATOR: So that's admitted?

21 THE COURT: Okay. Is there any objection to its  
22 admission?

23 MR. RECKERS: No objection in the form of a  
24 demonstrative, Your Honor.

25 THE COURT: All right. It's admitted.

1 (Plaintiffs' Exhibit 6000 received into  
2 evidence.)

3 MS. DUNN: Thank you, Your Honor.

4 BY MS. DUNN:

5 Q. Dr. Davis, now that we've talked about the software  
6 library and the environments, let's go quickly over the  
7 last three categories of copying that you mentioned,  
8 backups, RAM copies and copies of support documentation.

9 First of all, what are backup copies?

10 A. Backup copies are snapshots that you take of the  
11 information on your computer so that if something bad  
12 happens, you can get it back again. So the basic idea is  
13 to make a copy and literally set it physically aside, put  
14 it someplace else.

15 So, for instance, if the disk on your computer  
16 fails -- if mine failed, I would have to shoot myself  
17 because so much of my life is on there. So I make backup  
18 copies of my disks and keep them separate from the  
19 computer.

20 So I make copies so that I can have those  
21 snapshots so in the event of a problem, I can go back to  
22 what I was working on.

23 The next one is RAM copies --

24 Q. Let's --

25 A. Sorry.

1 Q. Let me hold you up there because I think we should  
2 spend a few minutes on backup copies, make sure everyone  
3 understands.

4 So a backup copy, I think you said, is a  
5 physical copy.

6 A. It is. Let me be slightly more precise.

7 It's a copy of the information that you want to  
8 put on a physically different place. So, for instance, I  
9 have a separate disk on my desktop that I copy the  
10 information from my laptop onto that physically separate  
11 disk.

12 And, in fact, since I'm very careful, I actually  
13 have one of those at home and one of those in my office.  
14 So if my house burns down and takes my computer and one  
15 disk, I still have the one in my office that has my files  
16 on it. So I've got two separate physical backups of my  
17 information.

18 Q. But you may have other problems if your house burned  
19 down.

20 Okay. So once a backup is made, what do you do  
21 with it?

22 A. The most important thing is don't touch it because  
23 the point of a backup is to have it there should you need  
24 to go back to recover the information that's in there.

25 Q. Okay. And so would you work on a backup?

1       A.       No. The whole point of it is it should reflect the  
2 state of your computer at the moment the backup was made  
3 because that's what it's there for. It's there to take me  
4 back to where I was if something goes wrong.

5       Q.       What does it mean, Dr. Davis, to use an environment  
6 for troubleshooting purposes?

7       A.       My understanding is it means running that  
8 environment so that you can try it out perhaps with a  
9 specific piece of data that somebody says is causing  
10 problems, or try it out to see if it's giving the right  
11 answer in a particular case.

12               The important point about using an environment  
13 for troubleshooting purposes is it's using the environment,  
14 it's running the code and, in some way, presumably, making  
15 some changes.

16       Q.       So if an environment is used for troubleshooting  
17 purposes, is that consistent with using it as a backup?

18       A.       No. As I said, a backup is supposed to be a  
19 snapshot of the system put aside for disaster recovery.  
20 You shouldn't be using it for anything else because it may  
21 change it, and it isn't what you want. You want the backup  
22 copy to be a snapshot of a particular point in time, and if  
23 you're doing something else with it, it's no longer a  
24 backup.

25       Q.       Basically you mess it up.

1       A.       You could mess it up. But even if you don't mess it  
2 up, it's not a backup anymore. Once you get it back and  
3 start using it, it's not the backup. The backup is the one  
4 that's sitting out on the disk.

5       Q.       So did Rimini Street make backup copies of its local  
6 Rimini environments for the applications at issue in this  
7 case, PeopleSoft, Siebel, J.D. Edwards, and Oracle  
8 Database?

9       A.       Yes, they did.

10      Q.       And in your work, did you count up how many backups  
11 were made?

12      A.       I tried to make an estimate of the number of backups  
13 that were made, and the way we did that was to look at  
14 Rimini Street's own description of the schedule they had.

15               Any good company has a scheduled backup policy.  
16 You want to do it every day, every week, every month,  
17 whatever.

18               So we looked at Rimini Street's schedule for  
19 doing monthly backups, and we looked at when a particular  
20 customer started and when they may have finished, and came  
21 to a number of the number of monthly backups that were  
22 made.

23               Now, they did, in fact, make daily and weekly  
24 backups also. But for our purposes, we just counted up the  
25 number of monthly backups, and you see those figures on the

1 screen in front of you. The total number of backups made  
2 was something on the order of almost 13,500.

3 Q. Okay. So let's move, then, to RAM copies which you  
4 had mentioned. What is a RAM copy?

5 A. Well, the easiest way to understand the RAM copy is  
6 on the next slide here.

7 I want you to imagine you're going to use Word  
8 to write a letter. The Word program normally is sitting on  
9 your hard drive.

10 If you actually want to use the program, it has  
11 to be copied into what's called the RAM, the Random Access  
12 Memory, in your computer. The only place software can be  
13 executed from is this kind of memory, not the kind that's  
14 sitting on your hard drive.

15 So you have to literally make a copy of the  
16 program sitting on your disk and put that copy into RAM.  
17 This is just a natural and unavoidable consequence of  
18 trying to run any program. Every time you run the program,  
19 you're making a RAM copy.

20 Q. Okay. And so did Rimini Street make RAM copies of  
21 PeopleSoft, J.D. Edwards, Siebel, and Oracle Database?

22 A. Unavoidably so.

23 Q. Were you able to count that up?

24 A. No.

25 Q. Why not?



1       A.       Because in order to count these I would have had to  
2       have been standing over them, watching them, all of them,  
3       every time they started every one of their programs, and  
4       there's just no way to do that.

5       Q.       Okay. So let me ask you then about this last  
6       category of copying which you've called support  
7       documentation, and you described this earlier as a user  
8       manual and -- similar; is that right?

9       A.       Yes.

10      Q.       Who writes the support documentation in this case?

11      A.       This is written by Oracle because it's their  
12      software.

13      Q.       And when you're talking about copies of support  
14      documentation, again here, are you talking about  
15      PeopleSoft, Siebel, and J.D. Edwards?

16      A.       Yes, I'm talking about the support documentation,  
17      the manuals, the installation instructions for all the  
18      different varieties of software.

19      Q.       Were you able to determine how much Oracle  
20      documentation Rimini Street had copied onto Rimini Street's  
21      own system?

22      A.       Yes, once again we did this looking for verbatim  
23      overlaps. And we got a chart here that's a little  
24      complicated, but let me take you through it.

25                   The columns are the different products,

1 PeopleSoft, JDE, and Siebel. And in each row is the  
2 different kind of format in which a support document might  
3 be found.

4 Let's go to the second row. Dot doc is a Word  
5 file that I'm sure some of you recognize. And there are  
6 other kinds of files that hold support and information.

7 And what we did is say how many copies of Oracle  
8 support documentation in any of these formats was found on  
9 Rimini Street drives, and if you add up everything, you get  
10 the number in the lower right-hand corner, which is almost  
11 600,000 copies.

12 Q. In the course of your work did you also see evidence  
13 that the copied Oracle documentation was delivered to  
14 customers with Rimini's name on it?

15 A. Yeah. There's at least one document that indicated  
16 that that kind of practice actually happened.

17 Q. Okay. I'd like to show you Plaintiffs' Exhibit 236.

18 Do you see that?

19 A. Yes.

20 Q. Do you recognize that?

21 A. Yes, it was one of the documents I examined in this  
22 case.

23 MS. DUNN: Your Honor, we move to admit  
24 Plaintiffs' Exhibit 236.

25 MR. RECKERS: No objection.

1 THE COURT: It's admitted.

2 (Plaintiffs' Exhibit 236 received into  
3 evidence.)

4 MS. DUNN: And if we could publish it to the  
5 jury.

6 THE COURT: You may.

7 BY MS. DUNN:

8 Q. Dr. Davis, do you see where this e-mail is from John  
9 Whittenbarger to Dennis Chiu?

10 A. Yes.

11 Q. And you understand those both to be Rimini  
12 employees?

13 A. Yes.

14 Q. And Dennis Chiu to be the VP of support services?

15 A. Yes.

16 Q. And what's the subject line there?

17 A. The subject line is Siebel Alert Policy.

18 Q. So John Whittenbarger says, "Dennis, I notice this  
19 Siebel alert pasted below that came out recently that  
20 applies to MedPro. Since their Siebel support has expired,  
21 I assume our policy is to repackage the info in our own  
22 words for distribution to our clients. Can you confirm how  
23 you want to handle this?"

24 So, first of all, Dr. Davis, what is a Siebel  
25 alert?

1       A.       Can I do one quick preliminary?

2               Just so you understand this display, the  
3 document that's sort of in the background is the original  
4 document. And these sort of tier-like sheets, those are  
5 literal quotes out of the sheet in the background. It's  
6 just a way of making the relevant text easier to read, just  
7 so you understand what's being displayed.

8       Q.       Thank you. So what's a Siebel alert? What's that?

9       A.       A Siebel alert was information that was created by  
10 the Oracle software engineers whose job it was to manage  
11 and support their software, and, in this case, it's kind of  
12 hard to read on the screen so I'll read it from the  
13 physical copy in front of me in part.

14              It turns out that Siebel software may crash in a  
15 particular instance. So what the Oracle software engineers  
16 discovered through what I expect to be some reasonably hard  
17 work, was that there was actually a problem with their  
18 software, and they wanted to issue an alert to their users  
19 and tell them about it. That's the subject of this memo --  
20 of the original memo.

21              I'm sorry, I said that badly. That's the  
22 original alert. That's the alert that Oracle software  
23 engineers created.

24       Q.       Okay. And it looks like Mr. Whittenbarger is saying  
25 that the Siebel support has expired for this client. Do

1     you see that?

2         A.     Yes.

3         Q.     Okay. So when he said "I assume the policy is to  
4     repackage the info in our own words for distribution to our  
5     clients," what do you take that to mean?

6         A.     It seems to mean what it says on the face of it,  
7     which is they're going to take the information that the  
8     Oracle software engineers worked to come up with and  
9     rephrase it into their own terms so that they can send it  
10    to their clients.

11        Q.     And when Dennis Chiu responds, "Yes, we need to  
12    rephrase before redelivering to MedPro such that it's not  
13    verbatim," what do you take that to mean?

14        A.     They're trying to distribute this information  
15    without necessarily acknowledging its source.

16        Q.     Okay. Let's move to the next slide, if we could.

17                So now that you have explained to us all five  
18    categories of copying, it would be great to get a sense of  
19    how much copying this is in total.

20        A.     We're going to do that with a little bit of a  
21    graphic here. We have this file cabinet metaphor, and we  
22    have one of the environments.

23                This particular environment happens to be named  
24    F751OLGS. So that's one of the local environments from  
25    Rimini Street.

1           And by examining that environment, we discovered  
2           there were 2,023 copyrighted Oracle files that were copied  
3           exactly into that one environment.

4           And then, if we want to get an idea of how much  
5           copying was happening all together, we can look at not just  
6           one such environment, but the whole collection of  
7           environments.

8           Okay. And I'm told there are precisely 478 file  
9           icons on this slide, indicating that 478 Rimini Street  
10          environments that they have in fact admitted to.

11          So what we've got is any one of these  
12          environments with thousands of files in it and 478 such  
13          environments that they have admitted creating.

14          Q.     And is there some way for you to give a jury a sense  
15          of how much that would amount to?

16          A.     Well, people always like to do this with stacks of  
17          paper and paper lying down and such, so we'll go with the  
18          standard model and say, if we were to print out this  
19          information, take a rough approximation as to how much  
20          information might be in each one of those files and print  
21          it out, it turns out that it would stretch -- Matt --

22          Okay. If we also included -- sorry, I got ahead  
23          of myself. If we also included the other copies, that is,  
24          the copies made on the backups, then printed all of that  
25          out, then we would wind up with a stack of paper if laid

1 sheet by sheet, end to end, would go all the way from here  
2 to Rimini Street's headquarters in California.

3 Q. So, Dr. Davis, one of our claims in this case is  
4 that these copies were not authorized because they were on  
5 Rimini's computer systems as opposed to the customer  
6 systems.

7 So how many of the copies we've discussed so far  
8 were used on Rimini's computer systems?

9 A. All of the copies we're talking about so far were on  
10 Rimini's computer systems.

11 Q. Thank you.

12 In the course of your work, did you examine  
13 Oracle's copyright registrations?

14 A. Yes.

15 Q. And did you make a determination about how many --  
16 how many of those copyright registrations were copied?

17 A. Yes. I determined that there were 62 different  
18 Oracle copyright registrations covering Oracle software and  
19 support material that had been copied in this case onto  
20 Rimini Street systems.

21 Q. And so switching gears away from copying, we'd like  
22 to talk about cross-use, and the jury has already heard a  
23 little bit about cross-use.

24 What is cross-use, Dr. Davis?

25 A. As you've heard before, cross-use, as we're talking

1 about it, involves using one customer's software for the  
2 benefit of another customer.

3 So we came up with this graphic as a way of  
4 illustrating the idea. Imagine this software support  
5 person is using software that was created for Customer A,  
6 but he's using it to support Customer B because Customer B  
7 is on the phone.

8 That's what we mean by cross-use, using software  
9 created for one customer for another customer's benefit.

10 Q. Is that consistent with the idea of keeping  
11 something in a silo?

12 A. No, it is not.

13 Q. Why not?

14 A. Because you're not segregating by customer. You are  
15 precisely moving across the customers. You're using  
16 software from one customer -- designated for one customer  
17 for the benefit of another.

18 Q. What, if any, examples of cross-use did you see in  
19 this case?

20 A. In general there were two broad categories of  
21 cross-use, what we call cloning and then updates.

22 Q. Okay. Let's take cloning first. What is cloning?

23 A. Cloning is a way of creating new environments. We  
24 start with one environment. Let's suppose an environment  
25 has been made at Rimini that is an installation of a piece



1 of Oracle software.

2 One way to get a bunch more installations of  
3 that software is to literally copy the information on the  
4 disk of that first system onto a bunch of other machines.  
5 So I can make new installations, new environments, simply  
6 by copying old environments. That's a process that's  
7 called cloning.

8 Q. And which applications at issue in this case did you  
9 find that Rimini cloned local environments?

10 A. For the PeopleSoft software.

11 Q. All right. I'd like to show you a demonstrative of  
12 the way that Rimini named its computer -- its environments  
13 on the computer.

14 And this combination of strange letters and  
15 numbers might be a little confusing. So if you could  
16 explain to the jury what this is showing and what you can  
17 learn from their named invention, that would be very  
18 helpful.

19 A. The first thing to understand is why did they do  
20 this. Why did they have to come up with a naming system.  
21 They needed to come up with a naming system because they've  
22 got almost 500 environments, and if they called it  
23 environment 1, environment 2, environment 3, it would be  
24 really hard to figure out what it was an environment for.

25 So they came up with a naming system that tells

1 you a lot about the environment. RSI, of course, just  
2 stands for Rimini Street.

3 The next letter, H, was a code letter for which  
4 product was on there. In this case, it was HRMS, which is  
5 the human relations management software. That's the sort  
6 of stuff that helps you do the kinds of things your human  
7 relations department does.

8 The next three numbers are the version of the  
9 software. So this was version 8.31 of HRMS.

10 And, importantly, the next three letters are a  
11 code for the customer. So this particular customer is the  
12 city of Mesa, Mesa, Arizona. So looking there, we can tell  
13 which customer this local environment was created for.

14 The last single letter indicates the vendor of  
15 the database that underlies the -- this particular  
16 application on this environment.

17 Q. If you go to the next slide, what is this?

18 A. This is a kind of family tree that results from  
19 cloning that we put together based on information supplied  
20 by Rimini Street, and for our purposes here, the important  
21 thing is to look at the bold letters.

22 So let's look in the middle of the slide near  
23 the top, H881PETO. That would be an installation of HRMS  
24 version 8.81 for customer with the abbreviation PET, which  
25 is Petco, you know, the pet supply store.

1           That local environment was cloned three times.  
2       It was cloned once for the benefit of Petco, but it was  
3       also cloned for the benefit of customer COM, the city of  
4       Mesa, and it was also cloned for the benefit of customer  
5       MES, which is Michigan Educational Services.

6           Drop down in the middle again, HA31LBI. LBI was  
7       the abbreviation for Limited Brands, again the people who  
8       have the store The Limited, that was cloned three times,  
9       once for Limited Brands but also for other customers as  
10      well.

11           In brief, you need only look here at the  
12      variation in the bold lettering to see how an environment  
13      for one customer was cloned to create an environment for  
14      another customer. That's what we mean by cross-use.

15      Q.     And is this a picture that you made?

16      A.     Yes, I created this.

17      Q.     Okay. Based on what?

18      A.     Based on information supplied by Rimini describing  
19      the environments that they had created.

20      Q.     What sort of information did Rimini Street provide  
21      that allowed you to draw your conclusions about their  
22      cloning?

23      A.     There was detailed information about the name that  
24      is this code name for the environment. There was  
25      information about where it had come from.

1 Q. So I'd like to show you Plaintiffs' Exhibit 1491A.

2 A. Yes.

3 Q. Do you recognize that?

4 A. Yes, I do.

5 Q. What is it?

6 A. It's a collection of what Rimini Street referred to  
7 as environment billed requests.

8 MS. DUNN: Your Honor, plaintiffs move 1491A.

9 MR. RECKERS: No objection.

10 THE COURT: It's admitted.

11 (Plaintiffs' Exhibit 1491A received into  
12 evidence.)

13 BY MS. DUNN:

14 Q. Dr. Davis, do you have one piece of paper in front  
15 of you or a whole stack of paper?

16 A. I have a whole stack of them. I think there's 32 or  
17 something like that. I forget the exact number.

18 Q. Okay. So I'd like to show the jury just an example  
19 page. But you if could explain to them what your stack of  
20 paper contains and whether this is a representative  
21 example, that would be great.

22 A. First, let me correct myself. There are, in fact,  
23 68 of them here.

24 Q. Thank you.

25 A. So let's go to the one on the screen.

1           This is a sample of a environment builder  
2 request just the way it says, and this is what's showing up  
3 here on the paper in front of me.

4           This is a form that I understand that the Rimini  
5 Street personnel would fill out when they wanted to have a  
6 cloning done. That is, a new environment created from an  
7 old environment.

8           And there's a number of pieces of information  
9 they had to supply. The first one that I want you to pay  
10 attention to is the one shown here highlighted in red. It  
11 says "clone source." That is which previous environment do  
12 you want to make a copy of.

13           And here it turns out it's the one labeled  
14 H831LBI -- just a minute. It's the one labeled H831LBI.

15           It's saying the HRMS831 from Limited Brands is  
16 the one we want to copy. And then the other piece of  
17 information on the slide is the name of the new virtual  
18 machine. VM stands for virtual machine. So that's the new  
19 virtual machine we're going to create by making a clone of  
20 the one from Limited Brands.

21       Q.     And this was something that Rimini Street had a form  
22 for?

23       A.     Yes, it was apparently so routine that they had a  
24 form for doing it, and, as I said, there are 68 of those  
25 forms here.

1 Q. I'd also direct your attention to the category on  
2 the form that says Software Media Location. Do you  
3 recognize that location?

4 A. Yes. And before I get there, actually there's  
5 something else I meant to say here.

6 The other thing to keep in mind is this slide is  
7 entitled cross-customer cloning because, in fact, the  
8 source is Limited Brands, software for Limited Brands, the  
9 destination is software intended for the city of Mesa. So  
10 we're cloning from one customer's software for the benefit  
11 of another.

12 Q. Is that what you call cross-use?

13 A. That's one example of cross-use.

14 Now, can I have your question again, please?

15 Q. Sure. Where it says Software Media Location, there  
16 are -- well, looks to be a folder name?

17 A. That's correct. It's a folder name. It's a  
18 location on Rimini Street disks.

19 Q. Is that one of the folders in the software library  
20 to your knowledge?

21 A. I believe it was, but I can't be positive about it  
22 because, to my knowledge, it was one of those that was  
23 deleted.

24 Q. Professor Davis, in the course of your analysis,  
25 were you able to determine how many of Rimini Street's

1 cloned environments were created for the purpose of  
2 cross-use, in other words, were created for a different  
3 customer, other than the customer whose environment it was?

4 A. Yes.

5 Q. And how many did you find?

6 A. It turns out there were 104 customer environments  
7 that were cloned from other than the customer who was  
8 getting the environment. So we're calling this the  
9 cross-use because they're taking an environment from one  
10 customer to create an environment for a different customer,  
11 and there were 104 such instances.

12 Q. Okay. So let's move away from cloning and talk a  
13 little bit about the second kind of cross-use that you  
14 mentioned which has to do with updates and fixes.

15 A. Before we do, can I add --

16 Q. Sure.

17 A. Matt, could we back up?

18 Okay. Just so you understand, this is a form --  
19 this form that you're seeing is part of a document from  
20 Rimini Street, and if you read the first line, it says that  
21 we're going to create -- that an environment for AO Smith  
22 Corporation, with the name that's given in the second  
23 column, had a build source of H881DROO.

24 So what they're saying is the AO Smith  
25 Corporation got an environment by cloning an environment

1 that was created for a different customer, in this case a  
2 customer called Dynamic Research. That's how we know there  
3 are 104 cross customer claims.

4 Q. Thank you. Okay. So we talked about cross-use and  
5 cloning. Let's talk about cross-use with regard to updates  
6 and fixes.

7 And this is the slide that you showed us earlier  
8 which just lists the kind of updates that you talk about in  
9 your report.

10 Let's talk a little bit more about updates and  
11 fixes in general.

12 Dr. Davis, how, if at all, are Rimini Street's  
13 fixes and updates modifications of Oracle software?

14 A. They are running Oracle software. They have Oracle  
15 software on their local machines.

16 When they go to make a change to the software to  
17 do any of the kinds of updates we're talking about here,  
18 the software they're changing is Oracle software. So they  
19 must be modifying Oracle software in order to make the  
20 change.

21 Q. Is that something that's called a derivative work?

22 A. Yes. As I understand it, a derivative work comes  
23 about when you take a work that has been created, make some  
24 change to it, and you have derived a new work from that  
25 original work.



1           If I were to decide that I've got a better  
2       ending to one of the Harry Potter books than JK Rowling  
3       thought of, and I wrote a book just like it except it ended  
4       differently, that would be judged, as I understand it, to  
5       be a derivative work.

6       Q.     And what's your understanding about the copyright  
7       owner's rights with respect to modifications of its own  
8       copyrighted software? So what are -- for example, like  
9       what are JK Rowling's rights to her work if somebody is  
10      making a derivative work?

11      A.     My understanding --

12           MR. RECKERS: Objection, Your Honor, 702.

13           THE COURT: I'll allow him to testify to his  
14      understanding.

15           Ladies and gentlemen, I would inform you in that  
16      considering Dr. Davis' answer on this subject, he's allowed  
17      to testify as to what he has taken into consideration.

18           That is not to say that what he has taken into  
19      consideration is necessarily true, false, or somehow  
20      otherwise to be interpreted. It is only being offered for  
21      him to explain how he understands and what he's basing his  
22      answer upon.

23           You may go ahead, Doctor.

24           MS. DUNN: Do you need me to ask it again?

25           THE WITNESS: Please.

1 BY MS. DUNN:

2 Q. What's your understanding about a copyright owner's  
3 rights with respect to modifications of its own copyright  
4 software?

5 A. My understanding is the copyright owner is the one  
6 with the exclusive rights to making what are called  
7 derivative works.

8 So JK Rowling is the only one who can either  
9 make a derivative work or authorize someone else to create  
10 a derivative work.

11 When she allows someone to make a movie of her  
12 book, for example, she's licensing them to make a  
13 derivative work, but she has the right to say no, you can't  
14 do that. It's her right to decide.

15 Q. Would you consider Rimini Street's updates and fixes  
16 a derivative work?

17 A. Yes, in my opinion.

18 Q. How did Rimini development the fixes and updates?

19 A. One of the common ways they developed fixes and  
20 updates was to take a particular customer environment and  
21 make it into what they called a development environment.

22 So they had an idea of an environment, let's say  
23 for the PeopleSoft 881, and they'd have an environment  
24 which had originally been built for this particular  
25 customer to use as 881, but they would then use that

1 routinely as a place in which they could test and develop  
2 fixes to that version of that software. They call those  
3 development environments.

4 Q. I'd like to show you Plaintiffs' Exhibit 14.

5 A. Yes, I have it.

6 Q. Was this a document that you reviewed in the course  
7 of your work?

8 A. Yes.

9 MS. DUNN: Your Honor, we'd like to move  
10 Plaintiffs' Exhibit 14 and seek permission to publish to  
11 the jury.

12 MR. RECKERS: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Plaintiffs' Exhibit 14 received into  
15 evidence.)

16 BY MS. DUNN:

17 Q. Dr. Davis, this is an e-mail from Rimini Street  
18 employee Beth Lester to other Rimini Street employees in  
19 response to an e-mail from Travis Ormond to Beth Lester and  
20 other Rimini Street employees.

21 And the first thing I'd like to direct your  
22 attention to is the subject line of this e-mail which says  
23 Use of Dev Environment. What is a dev environment?

24 A. My understanding is dev environment was internal  
25 shorthand for what Rimini Street referred to as development

1 environments.

2 Q. And so directing your attention then to the bottom  
3 box, Travis Ormond says to Beth Lester and others, "I'm  
4 definitely not envisioning a dev environment for each  
5 custom client. I was envisioning a single dev environment  
6 per release."

7 Can you explain what that means?

8 A. My understanding of that is what they're saying --  
9 let me start again.

10 I understand this to be saying that they will  
11 take a version of, as I said before, let's take the human  
12 relations software of version 881 that has been created for  
13 a particular client, and sort of anoint that as a  
14 development environment.

15 That's the single dev environment per release.  
16 A release is a version of the software, say 881, and that's  
17 where they're going to develop their fixes if at all  
18 possible.

19 Q. And is that different than envisioning a dev  
20 environment for each custom client?

21 A. Well, if you talk about an environment for each  
22 client, then you need one, to put it in slightly different  
23 terms, for every different customer and every different  
24 customer's environment, as opposed to one per version of  
25 the software.

1                   So if one version of the software is used by 10  
2 clients, and you only have one dev environment for the  
3 version of the software as opposed to one dev environment  
4 for every client who is using the software, you've saved  
5 yourself a lot of time, money, and effort.

6       Q.       And if you do, why do you consider this to be  
7 cross-use?

8       A.       Because the dev environment has come from one  
9 customer and is being used for the benefit of other  
10 customers.

11       Q.       Were you able to determine during the course of your  
12 work how many updates or fixes Rimini Street created in  
13 total?

14       A.       Yeah. There's -- by looking at the Rimini Street  
15 disks, there was some sort of evidence of just under 2100  
16 different fixes and updates.

17       Q.       Okay. And did you analyze all of those 2100?

18       A.       Thankfully, no. There, in fact, wasn't enough  
19 information to make any headway on a large number of those.  
20 In some cases, there was nothing more than the name of an  
21 update or some reference to it.

22                   We went through the Rimini Street disks and  
23 looked to find all of the updates that had enough  
24 information about them that they could actually be  
25 analyzed. So they might actually have the code or at least

1 some documentation of what they tried to do, some  
2 information about how they were tested and so forth.

3 And when we restricted the set to those that  
4 were actually analyzable, we found that there were 622  
5 updates and fixes that qualified by that criteria.

6 Q. How long would it take to look at 622 updates?

7 A. I still wouldn't be done, and it would be a whole  
8 lot more time. Each of those is hours worth of work. It  
9 would have kept me busy for some months.

10 Q. What did you do instead?

11 A. Instead, there was a statistical expert who was  
12 retained whose job was to say can we pick -- can he pick  
13 out a representative sample of those 622 such that if that  
14 sample was analyzed, whatever we found on that sample was  
15 very likely to be true of all of them.

16 So to give you a commonsensical example, if I  
17 wanted to know the gender breakdown of all of the students  
18 at MIT, I could go and ask every student what gender they  
19 were. Okay? That's a lot of work.

20 Or I could pick out 500 students at random, or  
21 100 students at random and check that, and if I pick them  
22 out carefully, the sample is a good representation of the  
23 entire population, using the terms that are sometimes used  
24 in this situation.

25 So if you do it right, you can choose a sample

1 of the entire world, analyze that, and, with good  
2 confidence, come to conclusions that will hold for the  
3 entire population.

4 And in this case, the statistical expert was the  
5 one who picked out 88 of the 622 using methods that are  
6 known to be valid for getting a representative sample.

7 Q. And how many of those 88 did you find to be  
8 cross-uses, fixes, or updates?

9 A. I found 74 of those 88 were involved in cross-use.

10 Q. And why, in your opinion, did Rimini Street engage  
11 in this kind of cross-use for developing its updates?

12 A. It saves a lot of time and effort and money by  
13 consequence.

14 Q. Isn't that just being efficient?

15 A. The only problem with your statement there is the  
16 word "just," okay? It's being efficient, but at what cost?

17 I have to give you a little background. There's  
18 an organization in my field called the Association For  
19 Computing Machinery, ACM. It's been around since the  
20 beginning of the computing field, and it's the largest and  
21 probably one of the most prestigious professional  
22 organizations in the field.

23 They have a code of ethical conduct for software  
24 engineers, and that's what this job is called, a software  
25 engineer, somebody who builds programs.

1           And there are two really interesting statements  
2           in that code of ethical conduct. One is you have to obey  
3           the law. One would think that was obvious, but they say  
4           it. In fact, they say you have to obey the law of the  
5           country you're working in because these things are  
6           international sometimes.

7           The other interesting comment in there is a  
8           professional software engineer is obligated to report it if  
9           they think the work that they're doing involves  
10          infringement of intellectual property. It's an explicit  
11          statement in the code of ethics for software engineers of  
12          the largest professional organization for this field.

13          Q.     Did you encounter any technical difficulties when  
14          you looked to determine cross-use of updates and fixes?

15          A.     Yes.

16          Q.     Can you explain that.

17          A.     One of the tools that's routinely used to create  
18          these fixes and updates puts a kind of a stamp on one of  
19          the files that gets created, and that stamp gives useful  
20          information about where the update was -- let me say that  
21          again, start again.

22                  It gives useful information about the  
23          environment in which that update was created.

24          Q.     I'd like to show you Plaintiffs' Exhibit 136.

25          A.     I have it.



1 Q. What is that?

2 A. Are you sure about 136?

3 Q. I feel pretty sure.

4 A. Okay. Hang on one second.

5 Ah, I'm sorry, I was looking at the wrong part  
6 of it. Yes, I have Exhibit 136 in front of me.

7 Q. Excellent. Do you recognize it?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's a piece of what I take to be internal Rimini  
11 Street documentation for how to go about what they call  
12 packaging up fixes. Once you've created a fix and update,  
13 you have to package it up in a way that it was easy for the  
14 customer to use.

15 Q. Is this something you looked at when you were  
16 preparing your report?

17 A. Yes, indeed.

18 MS. DUNN: Your Honor, plaintiffs move  
19 Exhibit 136.

20 MR. RECKERS: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Plaintiffs' Exhibit 136 received into  
23 evidence.)

24 Ms. Dunn: With permission to publish to the  
25 jury?

1 THE COURT: You may.

2 BY MS. DUNN:

3 Q. Professor Davis, please explain to the jury what  
4 they're seeing here.

5 A. Yes. First of all, this is the paragraph I was  
6 looking for and I had a little trouble finding it in the  
7 document which is why I got confused.

8 But it is indeed extracted from a document, and  
9 let me show you first the stuff that's at the lower part of  
10 the screen. That's the stamp that's automatically created  
11 by the tool that helps you create an update.

12 And the interesting thing there for our purposes  
13 is the line that says REM database: H831DEVM.

14 Several things to understand. H831DEVM as you  
15 might by now recognize is the name of an environment. In  
16 particular, it's the environment in which this part of the  
17 fix was created. That information is automatically added  
18 by the tool that helps to create the fix.

19 REM at the beginning of the line is an  
20 abbreviation for remark, and what it means is this is a  
21 line intended for people to read. The computer doesn't  
22 read this. Okay?

23 It's explicitly a way of indicating to the  
24 computer don't pay attention to this, this is documentation  
25 intended for human consumption.

1           Now, the interesting thing is in the extracted  
2 paragraph above, which says that the right way to deal with  
3 this is to open up each dev file and remove the remark line  
4 that includes the database name.

5           This is instructions to Rimini Street employees  
6 telling them that when they're packaging up the update,  
7 they should go in and get rid of that indication, and we've  
8 graphically suggested this by drawing the red line through  
9 it. So they were told to remove that information.

10       Q.     Is there some technical reason to delete the remark  
11 line that includes the database name?

12       A.     There's no technical reason for this at all. It  
13 doesn't affect the functioning of the fix or update at all  
14 so there's no technical reason for getting rid of that.

15       Q.     What, if any, conclusion did you draw based on the  
16 deletion of the remark line?

17       A.     One conclusion I drew was it made my work harder.  
18 It made my work harder because information that should have  
19 been in there, that was routinely been in there, had  
20 purposefully been deleted.

21           The other thing is, when asked to guess or infer  
22 why that was done, it seems to me a plausible inference is  
23 someone was trying to remove that information so that it  
24 wouldn't be noticed.

25       Q.     Thank you, Professor Davis.

1                   Let's talk a little bit about Rimini Street's  
2 customers.

3                   In the course of preparing your report, did you  
4 have access to a list of Rimini Street's customers?

5           A.       Yes, I did.

6           Q.       Where did that list come from?

7           A.       It came from Rimini Street themselves.

8           Q.       Did you also have access to a list that told you  
9 which customers had local environments on Rimini Street's  
10 own systems?

11          A.       Yes, I did.

12          Q.       So I'll show you now Plaintiffs' Exhibit 3507.

13          A.       Yes, I have it.

14          Q.       Is this the list you just mentioned, the list of  
15 Rimini Street customers with local environments on Rimini  
16 systems?

17          A.       The document contains that list, yes.

18                   MS. DUNN: Your Honor, we move to admit  
19 Exhibit 3507.

20                   MR. RECKERS: No objection.

21                   THE COURT: It is admitted.

22                   (Plaintiffs' Exhibit 3507 received into  
23 evidence.)

24                   MS. DUNN: If we could just show the jury what  
25 that list looks like. Thank you.

1 THE COURT: You may.

2 BY MS. DUNN:

3 Q. Dr. Davis, were you also able, during the course of  
4 your work, to create a list of Rimini Street customers who  
5 received fixes and updates that were cross-used?

6 A. Yes, I was.

7 Q. So I'd like to show you Plaintiffs' Exhibit 5429.

8 A. Yes, I have it.

9 MS. DUNN: Your Honor, we'd like to move to  
10 admit 5429 and show the jury.

11 MR. RECKERS: No objection, Your Honor.

12 THE COURT: It's admitted, and it may be  
13 displayed.

14 (Plaintiffs' Exhibit 5429 received into  
15 evidence.)

16 MS. DUNN: Thank you, Your Honor.

17 BY MS. DUNN:

18 Q. Professor Davis, is this list that the jury is  
19 looking at, this is the list of Rimini Street customers who  
20 received fixes and updates that resulted from Rimini  
21 Street's cross-use?

22 A. Yes, that's correct. There are 149 of them, as it  
23 says.

24 Q. So if those customers were organized by the date on  
25 which they signed up with Rimini Street, in other words, if

1 you could determine who were Rimini Street's earliest  
2 customers, based on these lists, would you be able to  
3 determine which of the earliest customers had either a  
4 local environment on Rimini's system or cross-used fixes or  
5 both?

6 A. Yes, I could, because we have -- as we just said, we  
7 have lists of both of those.

8 Q. And did you examine that question?

9 A. Yes.

10 Q. I'm now showing you a timeline. Does this timeline  
11 accurately summarize that information?

12 A. Yes, it does.

13 Q. Okay. And is this a timeline that you created?

14 A. Time for a fix or an update. All I had to do was  
15 say it.

16 Q. Thanks. All right. Dr. Davis, focusing again on  
17 this timeline now that we are operational, please explain  
18 to the jury what they're seeing in this timeline.

19 A. Okay. What you're seeing is a chronological list,  
20 chronological portrayal of the growth of the Rimini Street  
21 business for, as it says, the first 175 customers.

22 The gray wedge there indicates the growth from  
23 roughly February 2006 up until December of 2008, so that's  
24 the time range we're talking about here.

25 And we've marked a few of the notable points

1 along the way. The first customer, the first 50 customers,  
2 the first hundred customers, and then up to 175 customers.

3 And then what we can do is layer over that the  
4 customers who had Rimini environments, that is, local  
5 environments.

6 And what the take-away message from this so far  
7 is that a very large number of the first 175 customers had  
8 local environments on Rimini Street machines.

9 If we then add a layer in red that indicates  
10 customers that either had Rimini environments or cross-use  
11 of fixes of the sort that we were talking about before, now  
12 we're up at the top of that red line.

13 And you can see sort of by subtraction the total  
14 number of customers that don't have either a Rimini  
15 environment or cross-use fixed is relatively small compared  
16 to the total number of customers.

17 So the take-away message is Rimini Street's  
18 early growth depended in very large measure on local use of  
19 customer environments and cross-use of fixes.

20 Q. Thank you. And when you talk about those Rimini  
21 environments, the -- you just explained that the early  
22 customers had either Rimini environments or they had  
23 cross-use updates and fixes.

24 And so when you talk about the Rimini  
25 environments, are those the same environments you testified

1 about earlier that contained Oracle's copyrighted software?

2 A. Yes, we're talking about the local environments that  
3 resulted from storing Oracle software on Rimini machines  
4 and thereby copying Oracle software and documentation.

5 Q. Okay. And any time that you're talking about Rimini  
6 environments, just to be clear, are you talking about  
7 environments that contained Oracle's copyrighted software?

8 A. Yes.

9 Q. Thank you.

10 Okay. So I'm almost out of questions,  
11 Dr. Davis, but I want to return you to the chart that you  
12 showed us at the beginning which talked about how Rimini's  
13 systems operated.

14 And now that the jury has patiently listened to  
15 the explanation of all the terms, I'm hoping you can help  
16 them bring it together.

17 If it's useful to you, I would ask you, maybe  
18 Bill can help you set it up, just to put the flowchart up  
19 on the easel, and the jurors should have this on their  
20 screen too.

21 THE COURT: I'm going to have that marked as an  
22 exhibit, not necessarily admitted into evidence, but for  
23 the purposes of the record and for the record I would state  
24 that -- Madam Clerk, what will the exhibit number be?

25 COURTROOM ADMINISTRATOR: 6001.



1           THE COURT: 6001 is also being shown in visual  
2 format on the video screen. So you may go ahead and refer  
3 to that as you --

4           MS. DUNN: Thank you, Your Honor.

5 BY MS. DUNN:

6       Q.     Professor Davis, if you could just walk the jury  
7 through Exhibit 6001, and I will ask you also to make sure  
8 to project your voice so that the court reporter can make  
9 sure to get down everything that you're saying.

10     A.     Okay. You've seen this before so I'm not going to  
11 go into intense detail, but I just want to use it as kind  
12 of a way of summarizing the stuff we've been talking about  
13 before.

14           Information is going to flow from left to right  
15 throughout the diagram. One important point is, as I said  
16 before, it all starts with Oracle software and other  
17 information whether it comes from the Oracle websites, from  
18 installation media, this is Oracle's information in red.

19           It gets put on to Rimini Street systems and, in  
20 that act, lots of copying is happened -- happening. It's  
21 being copied into the software library.

22           As we saw, every time a local environment is  
23 being created, thousands of files are being copied here,  
24 thousands of Oracle files are being copied here.

25           Cloning creates copies of copies, so there's

1     what I can only refer to as a massive amount of copying  
2     that's going on in this process.

3             And all of that is to support the customer  
4     support, training and testing and development that Oracle  
5     eventually supplied.

6     Q.     And then, Dr. Davis, if you could just further  
7     explain, because we've spent a lot of time on the Rimini  
8     Street system, a little bit of time on the inputs from  
9     Oracle, and not that much time on outputs to customers.

10            So if you could explain in a little bit more  
11    detail how things get from the Oracle side of this demo to  
12    the customer side.

13     A.     So as we heard earlier, there's a lot of information  
14    available on Oracle websites. So this was being downloaded  
15    and in some cases downloaded into the software library.

16            We also heard earlier that there are  
17    installation media CDs and DVDs, and these are copied onto  
18    the software library and then used also to create local  
19    environments which, as we saw earlier, results in copying  
20    of the files that are on those DVDs into the local  
21    environments.

22            Sometimes the local environments were created  
23    from stuff that was in the software library. So, again,  
24    there's copying happening here.

25            Then we had the cloning process which is

1 producing additional copies that are happening here. So  
2 Oracle, Rimini copies of that information.

3 Q. And then what happens in the blue boxes before  
4 things get out the other end?

5 A. The local environments that have been made are used  
6 by Rimini Street engineers to do customer support or to do  
7 their own employee training. They may use these things to  
8 get used to a new product. So they create a new  
9 environment for a new software release so that they can try  
10 it out.

11 They use it for customer support.

12 They also use these environments to develop  
13 their updates. When they have to figure out how to upgrade  
14 a system for, say, a change in the tax laws, they're going  
15 to use their own local environment first to create the  
16 change and then to test it out because you better test the  
17 change. You don't want to hand out a test -- a change that  
18 isn't working very well.

19 Q. And that all uses Oracle software?

20 A. And all of these processes are using the Oracle  
21 software that's sitting here.

22 MS. DUNN: Okay. Thank you very much, Professor  
23 Davis. We have no further questions.

24 THE COURT: Mr. Isaacson, would you remove that  
25 exhibit before we start with cross-examination on behalf of

1 Rimini.

2 Ladies and gentlemen, would any of you like to  
3 take a short break before we start this cross-examination?

4 (Hand raised.)

5 THE COURT: We will do that then. We'll take a  
6 break for approximately 10 minutes, or whenever the jury's  
7 ready to go.

8 I admonish you again not to discuss the case in  
9 any way, and you may go ahead and step down.

10 (Recess from 12:44 p.m. until 12:58 p.m.)

11 (Jurors enter courtroom at 12:58 p.m.)

12 COURTROOM ADMINISTRATOR: Court is again in  
13 session.

14 THE COURT: Have a seat, please.

15 The record will show that we are reconvened in  
16 open court following the break and the jury is all present.  
17 Counsel and parties are present.

18 And, Mr. Reckers, are you prepared to proceed  
19 with cross-examination of Dr. Davis?

20 MR. RECKERS: I am, Your Honor.

21 THE COURT: Go ahead, please.

22 CROSS-EXAMINATION

23 BY MR. RECKERS:

24 Q. Good afternoon, Dr. Davis.

25 A. Good afternoon.

1 Q. My name is Robert Reckers, and you recall we met  
2 several years ago at your deposition. Nice to be with you  
3 again.

4 A. Same here.

5 Q. Dr. Davis, we've heard quite a bit about your  
6 background, but isn't it true that you're not an expert  
7 specifically in the enterprise resource planning software  
8 at issue in this case?

9 A. I'm not an expert in these particular applications,  
10 but as I suggested earlier, the fundamental issues we're  
11 talking about here are more generally issues of software,  
12 not of enterprise software specifically.

13 Q. All right. And just to be clear, you don't hold  
14 yourself out as an expert specifically in enterprise  
15 resource planning software, do you?

16 A. I don't hold myself out as an expert in that area,  
17 and I don't believe that expertise is required in this  
18 case.

19 Q. Okay. And we talked a little bit about your  
20 publications as well, your technical publications, sir;  
21 correct?

22 A. Yes.

23 Q. Isn't it true that at least in the last 10 years,  
24 you have not published an article directly on the subject  
25 of ERP software; is that right?

1 A. No, I have not published on ERP software.

2 Q. Okay. And then we also talked a little bit about  
3 your publications regarding intellectual property and some  
4 of the legal analysis work that you've done, and we heard a  
5 little bit about your thoughts on derivative work. Do you  
6 recall that?

7 A. Yes.

8 Q. Sir, you're not here to offer any legal opinions in  
9 this case, are you?

10 A. I am not.

11 Q. In particular, you're not here to offer a legal  
12 opinion as to whether or not the copying that you talked  
13 about constituted copyright infringement; isn't that right?

14 A. No. My job, my charter was to report on what  
15 happened on the copies that were made. That was the extent  
16 of it.

17 Q. Yes, sir.

18 And you also have not offered any opinions in  
19 this case regarding the Oracle licenses and what those  
20 licenses may or may not have covered; correct?

21 A. Correct. I'm not a legal expert and do not copy --  
22 sorry, do not comment on the licenses.

23 Q. Yes, sir.

24 And, in fact, in this -- as part of your work in  
25 this case, you have not even reviewed those licenses; is

1 that right?

2 A. That is correct, I have not reviewed the licenses.

3 Q. So, of course, then, you're not offering an opinion  
4 regarding whether Rimini's copying was or was not  
5 authorized under the Oracle licenses; correct?

6 A. That is correct. As I said, my charter was to  
7 determine what had happened, whether copies had been made,  
8 count them up and so forth. The judgment about other  
9 issues regarding them is for other people to make.

10 Q. Okay. Let's talk about the number of copies.

11 You testified, and I wrote it down, that Rimini  
12 made 478 copies in the form of environments, and at least  
13 13,000 additional copies through backup and restore  
14 procedures. Does that sound right?

15 A. Yes.

16 Q. Okay. You agree with me it's common for software  
17 licensees to make backup copies of software including  
18 disaster and recovery copies; correct?

19 A. I'm sorry, could you say that again? I want to make  
20 sure I hear all that properly.

21 Q. Absolutely. You agree with me that it's common for  
22 software licensees to make backup copies of their software  
23 including disaster recovery copies?

24 A. Well, let me take that piece by piece.

25 It's good practice to make backup, disaster

1 backup copies of files, including software.

2 What you can do with respect to any given  
3 application would depend on what the license permitted, and  
4 I haven't examined the license in this case and I haven't  
5 tried to come in with an opinion about what's common in the  
6 field with respect to the license.

7 Q. Exactly. If all of the copies, all of the 13,000  
8 copies that you mentioned, are authorized under licenses,  
9 then the number of copies is irrelevant; isn't that right?

10 A. If all of the licenses are authorized, then all I  
11 can say is all of the licenses are authorized.

12 Whether they remain relevant for other reasons  
13 is a much broader question to be answered that I can't  
14 answer.

15 If your hypothetical is that they're legal, and  
16 you're asking me whether they would then be legal, the  
17 answer is yes.

18 Q. Thank you. And, of course, then, you're not  
19 offering any opinions as to whether or not the 13,000  
20 copies were authorized or unauthorized under the Oracle  
21 license agreements?

22 A. No. As I said, my job was to in effect take a  
23 census and report all the copying that I found.

24 Q. And then again, you're not offering any legal  
25 opinion as to whether or not those copies constituted



1 copyright infringement?

2 A. I am not a legal expert, and I'm not offering a  
3 legal opinion.

4 Q. Okay. And as to the 400 and some environments that  
5 you mentioned, isn't it true that Rimini was supporting  
6 hundreds of clients using those environments?

7 A. I'm sorry. The answer seems so obviously yes that  
8 I'm afraid I don't understand your question.

9 Q. Sure. We have hundreds of environments; correct?  
10 We have hundreds of customers being supported by this;  
11 correct?

12 A. Yes.

13 Q. Likewise, you've testified that there are over half  
14 a million support files that were copied from Oracle's  
15 website. Do you recall that?

16 A. Yes.

17 Q. And that support file -- and those files included  
18 the patches and fixes, the things that Oracle makes  
19 available from their website; correct?

20 A. I believe so.

21 Q. Okay. And you're also aware, sir, that there are  
22 thousands of support files available on Oracle's website  
23 for users of the software to download; correct?

24 A. I haven't examined the website so I don't know the  
25 extent of it. What you say sounds plausible, but I can't

1 say firsthand.

2 Q. So if Rimini has hundreds of customers, those  
3 hundreds of customers individually may be entitled to  
4 thousands of files each from Oracle's website, fair?

5 A. I don't know. I haven't looked at the licenses so I  
6 couldn't tell you.

7 Q. Okay. Let's talk about your cloning opinions --  
8 your cloning opinions?

9 I don't mean this to be a memory task. I've got  
10 some numbers here from your report. With your permission  
11 and Your Honor's permission, if you don't have a copy of  
12 your report, I would like to pass you up a copy of the  
13 report.

14 A. I would like if it is permissible.

15 THE COURT: It is permissible. You may do that.

16 BY MR. RECKERS:

17 Q. Dr. Davis, again, assuming you don't have these  
18 numbers memorized, let me refer you to page 32 of your  
19 report.

20 A. Yes.

21 Q. In particular, my question is, of the environments  
22 you considered in this case, 122 environments were built  
23 using installation media; is that correct?

24 A. According to Rimini Street's Exhibit 1A3, which was  
25 referred to in this table you were talking about, there

1       were 122 which were claimed to have been built from  
2       installation software.

3       Q.       And I believe your report indicates, correct me if I  
4       misunderstand, that the 122 environments built from  
5       installation software constitutes 36 percent of the total  
6       of 338 environments; is that correct?

7       A.       Correct.

8       Q.       Okay. Let me ask you about the question of cloning  
9       in general.

10               You'll agree with me, sir, that cloning is a  
11       common practice in the software industry, won't you?

12       A.       No, I wouldn't make such a broad statement,  
13       certainly not across the software industry.

14       Q.       Let's look at what Oracle said about cloning.

15               Are you familiar with white papers in the  
16       industry?

17       A.       Yes, generally.

18       Q.       And you're aware that Oracle issues white papers  
19       from time to time to describe its software applications;  
20       correct?

21       A.       As a general matter, I'm aware of that.

22       Q.       You've reviewed certain technical documentations  
23       from Oracle in connection with this case; correct?

24       A.       I have.

25               MR. RECKERS: Your Honor, I would like to show

1 Dr. Davis what has been preadmitted as Defendants'  
2 Exhibit 351.

3 THE COURT: You may do so.  
4 (Defendants' Exhibit 351 received into  
5 evidence.)

6 MR. RECKERS: In addition, Your Honor, I'd like  
7 to publish 351 to the jury.

8 THE COURT: Pardon?

9 MR. RECKERS: I'd like to publish 351 to the  
10 jury. I believe it's been preadmitted.

11 THE COURT: Is there any objection?

12 MS. DUNN: No objection, Your Honor.

13 THE COURT: All right. It may be published.

14 MR. RECKERS: If we could zoom in on the title  
15 of the document.

16 THE COURT: Ladies and gentlemen, I might -- so  
17 you've heard Dr. Davis refer to different exhibits, and  
18 you've seen different things that appear on the screen, and  
19 you'll see that with other witnesses throughout this trial.

20 What you're seeing on the screen has all been  
21 exchanged between the parties beforehand, they know that  
22 it's here. Much of it is in evidence. It's available to  
23 them.

24 What you see, for example, on the video screens  
25 in front of you are excerpts which are taken from different

1 ones of those records, and usually the questioning  
2 indicates where it's come from or how it was prepared.

3 If you looked at the exhibit, it wouldn't look  
4 exactly like what you're seeing right on the screen, but  
5 it's in there.

6 So I appreciate the way counsel on both sides  
7 have approached this case and have this evidence before  
8 you. It makes things go much more smoothly.

9 With that stated, go ahead, please, Mr. Reckers.

10 MR. RECKERS: Thank you, your Honor.

11 BY MR. RECKERS:

12 Q. Dr. Davis, I've blown up the title of this  
13 particular white paper. It says *Application Management*  
14 *Delivering Improved Performance and Availability For Oracle*  
15 *Applications, an Oracle White Paper, April 2008.*

16 Do you see that?

17 A. I do.

18 Q. Let's look in this document about what -- to see  
19 what Oracle says about cloning.

20 A. Uh-huh.

21 Q. If we could turn to page 9 of the document, which is  
22 Bates number Oracle 11853. It will be blown up on your  
23 screen there, Dr. Davis, and you can turn to it in your  
24 binder as well.

25 A. Yes, I have it in the binder.

1 Q. In particular, let me draw your attention to the  
2 sentence -- I'm sure Marie will highlight it as well.

3 It says, "Another use of cloning is to create a  
4 development or test environment that resembles the actual  
5 production environment."

6 Do you see that, sir?

7 A. I do.

8 Q. And that's a statement in this Oracle white paper  
9 about the use of cloning to create development or test  
10 environments; correct?

11 A. Yes, it is.

12 Q. Okay. Let's move on to your analysis of Rimini  
13 updates.

14 You mentioned in your direct testimony that the  
15 records in the case indicated that there were a total of  
16 2100 --

17 A. I'm sorry. I'm confused.

18 Was there a question or was the question just is  
19 it there in the document?

20 Q. There was no question, sir.

21 A. Okay.

22 Q. Okay. Turning to the issue of updates. The -- you  
23 mentioned in your direct testimony that the records in the  
24 case indicated that there were, at the time you did your  
25 analysis, 2100 Rimini fixes that had been delivered at that

1 time?

2 A. A little more precisely, there was some kind of  
3 indication that there had been roughly 2100 fixes over the  
4 years.

5 Q. Okay. And from that 2100, you identified two  
6 folders on Rimini's development drive that had a total of  
7 622 fixes; correct?

8 A. Let's be a little more precise again.

9 We looked on the parts of the Rimini computer  
10 system that we were given to understand were the places  
11 where fixes and updates were developed.

12 So we looked where we expected to find those  
13 things and found 622 updates that had enough fixes in them,  
14 had enough information that they might plausibly be --  
15 might plausibly be analyzed.

16 Q. Right. So you took these two folders, and to be  
17 specific, sir, it's the HRMS development and HMRS staging  
18 folders; correct?

19 A. Yes. The folders that we were given to understand  
20 would be where the fix development occurred.

21 Q. And in those folders you found your population of  
22 622 updates from which you did your further statistical  
23 analysis; correct?

24 A. There were 622 that had enough information to  
25 actually be analyzed, correct.

1 Q. Okay. But that excludes 1471 fixes; correct?

2 A. To put it slightly more differently -- I'm sorry,  
3 that's silly.

4 To put it slightly differently, there were 1471  
5 fixes for which there was little to no information. So I  
6 didn't exclude them, the lack of Rimini documentation  
7 excluded them.

8 Q. As you sit here today, for that 1471, that -- those  
9 fixes, you have no opinion to offer whatsoever; correct?

10 A. Yes, because there wasn't enough information to find  
11 out what they were about.

12 Q. And so for about 1471 to -- about 70 percent of the  
13 total 2100; correct?

14 A. Yes, Rimini's records were insufficient to establish  
15 information about 70 percent of their fixes.

16 Q. Sir, do you -- isn't it true that you do not have an  
17 opinion as to 70 percent of the Rimini delivered fixes in  
18 this case?

19 A. And I'm explaining why. I'm explaining why I don't  
20 have an opinion on them, because Rimini hadn't kept records  
21 about them.

22 Q. My -- you'll be happy -- I'm sure you'll be able to  
23 explain that when your counsel gets up here.

24 My question, which I would like to make a clear  
25 record on, is the fact that you do not have an opinion as



1 to 70 percent of the Rimini fixes delivered that are at  
2 issue in this case.

3 A. I couldn't have come to an opinion on those,  
4 correct.

5 Q. You've also offered an opinion in this case that  
6 Rimini was able to reduce time and labor by way of its  
7 environment and fix creation process.

8 A. Correct.

9 Q. Okay. And with respect to that time and labor  
10 savings, you did not make any effort to quantify the amount  
11 of time and labor saved through the activities accused in  
12 this case?

13 A. With respect -- you're talking about fixes and  
14 updates here?

15 Q. I'm asking about the environment and fixed creation  
16 practices that you testified to, sir.

17 A. Well, the -- first, I did not attempt to do a sort  
18 of overall analysis, but there were things that I cited  
19 where Rimini employees indicated at least order of  
20 magnitude savings at a, for instance, cloning.

21 There was a comment by one of the employees that  
22 creating an environment from scratch might take four to six  
23 weeks, doing it by cloning might take a couple days. So I  
24 read that and quoted that.

25 Q. You've looked at some of the Rimini documents, but

1 you, yourself, have not done a quantitative estimate as to  
2 the time and labor savings for the activities accused in  
3 this case; correct?

4 A. I have not tried to come up with an overall  
5 quantitative estimate.

6 Q. Okay. And likewise you have not offered an opinion  
7 in this case regarding the amount of money that Rimini may  
8 or may not have saved through the copying at issue in this  
9 case; correct?

10 A. Correct, I have not.

11 MR. RECKERS: No further questions. Thank you,  
12 sir.

13 THE COURT: Redirect examination?

14 MS. DUNN: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. DUNN:

17 Q. Dr. Davis, so defense counsel just asked you a  
18 question, and it looked like you had more to say about it.

19 So he had asked you why you were unable to reach  
20 an opinion about a good number of Rimini's fixes and  
21 updates, and I wanted to give you the opportunity to finish  
22 your answer. Please.

23 A. It was really simply that there wasn't enough  
24 information about them as I suggested earlier.

25 There were lists -- there's a particular

1 document called Devtrak, D-e-v-t-r-a-k, I think. It was  
2 there to track software development in particular, fixes  
3 and updates, and there was a long list of entries in there.

4 But in some cases the only thing we had was --  
5 sorry, let me say that more carefully. The only thing that  
6 Rimini had was a phrase or a couple of words that described  
7 the fix. So there was no way to tell what was going on in  
8 that case, in the case of that fix or update.

9 Q. And that was not something provided to you by Rimini  
10 Street?

11 A. I'm sorry, what was not?

12 Q. It was not provided to you by Rimini Street?

13 A. What was not provided to me by Rimini Street?

14 Q. That information that you were --

15 A. That information -- well, no, that information was  
16 not provided so we couldn't do the analysis.

17 Q. Okay. Defense counsel also showed you a document  
18 that I have here, it's an Oracle white paper, and asked you  
19 a little bit about cloning, and it looked there also like  
20 you might have had more to say.

21 So, please, if you would like to finish your  
22 answer, go ahead.

23 A. The document does indeed advise Oracle customers  
24 that cloning is a process they can use to set up  
25 environments.

1           What's not clear to me is what Oracle recommends  
2           for its customers is, in fact, something that third parties  
3           can do.

4           This would come down to what the license says.  
5           I haven't examined the license, so I don't know one way or  
6           the other, but it is not, to my knowledge, automatically  
7           true that the rights that go with being the licensee of the  
8           software can automatically and en masse be passed on to a  
9           third party.

10           That would take someone who has read,  
11           understood, and analyzed the license to comment on it, and  
12           I just didn't want that to go by unchallenged.

13           Q.     I appreciate that. Is this white paper a license?

14           A.     No. To my understanding, no.

15           Q.     And defense counsel asked you that if a license  
16           permitted something, whether it would be permitted. I'm  
17           going to ask you the opposite question.

18                    If a license does not permit something, would  
19           that not be permitted?

20           A.     To my knowledge, if the license says you can't do X,  
21           then you're not supposed to do X legally.

22           Q.     How about if the license outlines things you're  
23           permitted to do but doesn't include other things. Are you  
24           allowed to do what's contained in the license but not  
25           things not contained in the license?

1 MR. RECKERS: Objection, 702.

2 MS. DUNN: Your Honor, defense counsel opened  
3 the door by asking Professor Davis the inverse of the  
4 question that I'm asking now.

5 THE COURT: Let me look at the question again,  
6 please.

7 I think -- I think the question is allowable.

8 Let me ask Ms. Reporter, would you read the  
9 question, again, please.

10 (The record was read by the reporter.)

11 THE WITNESS: It is my understanding that the  
12 license tells you what you can do, and you can't make any  
13 inferences about what's not contained in there. If the  
14 license doesn't tell you you can do it, to my  
15 understanding, you can't do it.

16 MS. DUNN: Thank you very much, Dr. Davis.

17 Your Honor, we have no further questions for  
18 this witness.

19 THE COURT: All right.

20 Any further cross-examination?

21 MR. RECKERS: No, Your Honor.

22 THE COURT: All right. Dr. Davis, that will  
23 complete your testimony, and you may step down. Thank you  
24 very much.

25 (Witness excused.)

1                   MR. WEBB: Your Honor, may I approach for a  
2 minute?

3                   (Sidebar conference held as follows:)

4                   THE COURT: Yes. They're trying to get some  
5 more microphones in here.

6                   MR. WEBB: Mr. Ravin has a dialysis appointment  
7 today. He needs to leave promptly at 2:00 if that's okay.  
8 I don't know what your plan is, to put him on now or  
9 call --

10                  MR. ISAACSON: Our plan is to call him and talk  
11 to him until 2:00.

12                  THE COURT: Okay. Well, let's not go past 10 to  
13 2:00. Right now the time is 1:22, ten to 2:00, and I'll  
14 leave it up to you to follow that, and if you don't, I'll  
15 let you know.

16                  MR. WEBB: Thank you, your Honor.

17                  MR. ISAACSON: My only difficulty is the clock's  
18 behind me.

19                  (Sidebar conference concluded.)

20                  THE COURT: All right. Plaintiffs' next  
21 witness, please.

22                  MR. ISAACSON: Your Honor, the plaintiff calls  
23 Seth Ravin.

24                  COURTROOM ADMINISTRATOR: Please raise your  
25 right hand.

1                   You do solemnly swear that the testimony you  
2 shall give in the cause now before the Court shall be the  
3 truth, the whole truth, and nothing but the truth, so help  
4 you God?

5                   THE WITNESS: I do.

6                   COURTROOM ADMINISTRATOR: Please be seated.

7                   Can you please state your name and spell your  
8 last name for the record.

9                   THE WITNESS: Certainly. My name is Seth Ravin;  
10 R-a-v-i-n.

11                  COURTROOM ADMINISTRATOR: Please tell us your  
12 city and state of residence.

13                  THE WITNESS: Las Vegas, Nevada.

14                  And please pardon my cold I picked up yesterday.

15                  COURTROOM ADMINISTRATOR: Thank you.

16                  THE COURT: Mr. Isaacson, go ahead, please.

17                  MR. ISAACSON: I don't want the jury to sit  
18 through another twenty or forty seconds of me sitting --  
19 standing silently, so I'm going to ask one of our lawyers,  
20 Meryl Governski, to make some notes on the white board for  
21 me.

22                  THE COURT: All right.

23                  MR. ISAACSON: So she'll be doing that while we  
24 talk.

25                  THE COURT: All right.

1                   MR. ISAACSON: We have a couple binders that  
2 we'll periodically be talking about with Mr. Ravin.

3                   THE COURT: All right. Thank you.

4                   SETH RAVIN

5                   called as a witness on behalf of the  
6 Plaintiffs, was examined and testified as follows:

7                   DIRECT EXAMINATION

8 BY MR. ISAACSON:

9           Q.     Mr. Ravin, we've only got a little bit of time  
10 today. Let's see if we can do a few introductory things.

11                   You are the founder and CEO of Rimini Street?

12           A.     Yes, I am.

13           Q.     And you're currently the CEO and chairman of Rimini  
14 Street?

15           A.     CEO and chairman, yes.

16           Q.     You started Rimini Street in the fall of 2005?

17           A.     September 2005.

18           Q.     And you got your first customer at the beginning of  
19 2006?

20           A.     That sounds about right.

21           Q.     And you have policy and operational control over  
22 Rimini Street; is that fair?

23           A.     As it would go along with a CEO and chairman, yes.

24           Q.     And you are the largest single shareholder for  
25 Rimini Street, and that's been true since the inception of



1 the company; correct?

2 A. Yes, I do hold the largest single amount of shares  
3 for the company, yes.

4 Q. And I think your counsel said in opening you  
5 formerly worked at PeopleSoft. Was that from 1996 to 2000?

6 A. Actually, I think we went to 2001.

7 Q. 2001. Okay. Thank you.

8 Now, in the opening statement you saw us show  
9 the jury a part of the answer that was filed in this case,  
10 and then that was shown to Professor Davis.

11 MR. ISAACSON: That was Exhibit PTX 5332 which  
12 has been shown before, so if we can put that on the screen,  
13 and if we can go to paragraph 34. Make that bigger, Matt.

14 THE WITNESS: Thank you. Now I can see it.

15 BY MR. ISAACSON:

16 Q. Now, you've seen this before. We've shown it a  
17 couple times while you've been in court.

18 It talked about how we accused Rimini Street,  
19 Oracle did, of stockpiling a library of Oracle's  
20 intellectual property to support its present and  
21 prospective customers.

22 And the answer said such a library has never  
23 existed at Rimini Street, and Oracle's aware of that fact  
24 and could easily have confirmed it if it worked with Rimini  
25 Street.

1           My question, sir, is this answer was a formal  
2 document filed with the Court that you approved; correct?

3       A.     That's correct. I did approve it, did read it.

4       Q.     Now, that was -- this was filed in March 2010.

5           MR. ISAACSON: If we can -- is 1482D in his  
6 binder?

7           May I approach the witness, Your Honor?

8           THE COURT: Actually, give that to my court  
9 clerk and have her do that, Mr. Isaacson.

10       BY MR. ISAACSON:

11       Q.     I've handed you PTX 1482D. This is basically the  
12 same document. You amended your answer, the court's filing  
13 in this case, a year later, June 2011, and you said the  
14 same thing about the library. You denied the library  
15 existed.

16       A.     Yes, that's correct.

17       Q.     And, again, having -- between -- again, after  
18 March 2010 and June 2011 in its filing to the court you  
19 approved this statement the library didn't exist; correct?

20       A.     Yes, because it didn't exist, that's correct.

21       Q.     Now, you also told customers that the library didn't  
22 exist; correct?

23       A.     I imagine so, yes.

24       Q.     Okay. Well, I don't want you just to imagine  
25 things. Let me show you an example. PTX 1475. That

1 should be in the second binder in front of you.

2 And so we have number --

3 A. Which PTX was that again?

4 Q. 1475. And I appreciate it's not always easy to find  
5 the tabs. If you ever have any difficulty, we've got  
6 people who can help you.

7 A. I think I've got it.

8 Q. And if we could turn --

9 MR. ISAACSON: Oh, don't run the screen yet I  
10 don't think.

11 Is this -- this is preadmitted. So I'd like to  
12 put it on the screen, Your Honor.

13 (Plaintiffs' Exhibit 1475 received into  
14 evidence.)

15 THE COURT: All right. Ladies and gentlemen,  
16 one of the rules which we follow is that we don't publish  
17 anything to you on the video screen that's not in evidence  
18 or supported by something directly in evidence.

19 So in this case, the pause was because counsel  
20 wasn't certain whether this exhibit had been preadmitted.  
21 It turns out that it has been, and so it may properly be  
22 displayed in front of you.

23 And yet I still will approve or disapprove the  
24 publications because sometimes we need to move the case  
25 along, and that becomes repetitive or doesn't serve a

1 purpose.

2 But the requests here have been acceptable to  
3 the Court, and they may be published.

4 MR. ISAACSON: All right. Thank you, Your  
5 Honor.

6 So if we can look at the second page, Matt.

7 BY MR. ISAACSON:

8 Q. Now, here, this is an e-mail at Rimini Street, and  
9 you were talking about what to say to the city manager for  
10 Eugene, a city in Oregon. Do you see that?

11 A. Yes, I do.

12 Q. And Sharon is talking to Peter about what it -- how  
13 to respond to the city of Oregon, and you can see on page 1  
14 that these answers are being forwarded to you; correct?

15 A. Yes, they were forwarded to me.

16 Q. All right. Now, returning to page 2 in the middle,  
17 where it says --

18 MR. ISAACSON: Matt, if you could pick up right  
19 in the middle where it says "Rimini Street does not host."

20 "Rimini Street does not host or maintain a  
21 software library on behalf of the client. If one client  
22 had a file or update that another client did not obtain  
23 prior to the end of their Oracle maintenance, Rimini Street  
24 will not provide such update to another client. That is  
25 why it's important that Rimini Street have enough time to

1 perform the requested archiving process."

2 BY MR. ISAACSON:

3 Q. You told this customer that Rimini Street does not  
4 host or maintain a software library on behalf of the  
5 client; right?

6 A. That's correct.

7 Q. Okay. And, in fact, up above you also said, "If a  
8 Rimini Street" -- a couple lines above.

9 "ANSWER: If a Rimini Street client would like  
10 Rimini Street to download a library of documents they are  
11 entitled to, we will do so at their request and/or their  
12 behalf."

13 And then you go down, "The files are then  
14 compiled into a Customer Connection archive DVD and  
15 delivered directly to the client."

16 All right. So there were libraries that you  
17 sent to the client; correct?

18 A. Yes, but this is a different library than Oracle had  
19 accused us of in the complaint.

20 Q. All right. I just want to talk about your  
21 procedures for libraries, sir.

22 A. Sure.

23 Q. And actually I'll ask you about that.

24 You did have libraries that you sent directly to  
25 clients; correct?

1       A.       We sent them archives of updates they were entitled  
2 to from the Oracle website.

3       Q.       When you say archives, you also called those  
4 libraries; right?

5       A.       Sometimes we would interchange that wording, yes.

6       Q.       All right. Then, is it your statement that you did  
7 not maintain such libraries of your own at Rimini Street?

8       A.       Well, we had -- in the Siebel days we actually had a  
9 different archive process in the early years that we  
10 changed. So there was that process.

11               In terms of for every client, every client,  
12 again, only got the files that they were entitled to.

13       Q.       Okay. Let's be clear, sir. When you say you had  
14 something in the earlier days for Siebel, did you have a  
15 library of Siebel software and documents at Rimini Street?

16       A.       We actually had an archive that used -- because of  
17 the way that the Siebel web product worked, and the way  
18 that the system worked, we had to do a -- what we called an  
19 incremental archive, and so the process was different than  
20 it was for PeopleSoft or even J.D. Edwards.

21               And so during the early years before Siebel  
22 systems were assimilated into Oracle's, there was a  
23 different process.

24               But, again, the most important part is no  
25 customer ever got a file that they weren't entitled to.

1                   MR. ISAACSON: All right. And I'll ask that the  
2 last part of the answer be stricken as not responsive, your  
3 Honor.

4                   THE COURT: That will be granted. The jury  
5 should disregard the nonresponsive portion of the answer.  
6 BY MR. ISAACSON:

7       Q.       Sir, did you have a Siebel library?

8       A.       Not of the type that you're talking about in the  
9 complaint.

10      Q.       Did you have a library of Siebel software and  
11 documentation at Rimini Street?

12      A.       Not for use in the way that you're talking about.

13      Q.       I didn't ask about use, sir.

14                   Did you have a library of Siebel software and  
15 documentation at Rimini Street?

16      A.       No.

17      Q.       Did you have a library at any point of PeopleSoft  
18 software and documentation at Rimini Street?

19      A.       We had installation media which was referred to as  
20 the software library.

21      Q.       All right. So you had a PeopleSoft library, and it  
22 consisted solely of installation media; is that correct?

23      A.       Yes, it was the installation media which is separate  
24 from what is downloaded from the website for updates and  
25 fixes. That's the core CDs.

1 Q. And when customers asked you if you had a library at  
2 Rimini Street of Siebel software or PeopleSoft software,  
3 you said no; is that right?

4 A. That's correct. We said no because it didn't exist.

5 MR. ISAACSON: Okay. Let me take a minute on  
6 another subject because I want to get through this part.  
7 This won't have to do with the library.

8 Matt, can you put up their opening slide?

9 BY MR. ISAACSON:

10 Q. All right. My colleague has graciously written down  
11 the names from the opening slide. So maybe you recognize  
12 these names. These are clients that you were proud enough  
13 of to put them into your lawyer's opening statement.

14 And you heard Professor Davis talk about  
15 environments, cross-use of fixes, and you're aware that  
16 your company has agreed, stipulated that a number of your  
17 customers had environments on the Rimini system; correct?

18 A. Yes.

19 Q. Okay. And so I'm now running down what has been --  
20 what I have from the stipulation. AT&T, do you sometimes  
21 called them JJill?

22 A. AT&T as a hosting provider of PeopleSoft products  
23 worked with us. There were several customers we shared  
24 including JJill, yes.

25 Q. Because of JJill I'm going to give that a check.



1 Oh, no, I'm sorry.

2 Any reason to disagree that all these companies  
3 that I checked here had Rimini environments at Rimini with  
4 copies of Oracle software?

5 A. Actually, I wouldn't know without seeing the  
6 documents or evidence to that effect.

7 Q. Now, did -- you're aware of the stipulation as to  
8 the environments with copies of Oracle software; right?

9 A. I know we have some stipulations, but I'm not sure  
10 exactly what all of them are on the legal front.

11 Q. All right. Did you check on the accuracy of that?  
12 Did you look into what you had been doing?

13 A. I'm sorry, I don't understand your question.

14 Q. Well, we have a stipulation in this case that there  
15 are hundreds of environments at Rimini, including many of  
16 the customers you shared with us in opening statement, that  
17 have environments at Rimini or have had them, with copies  
18 of Oracle software. Did you look into that issue yourself?

19 A. Oh, I know for a fact we had hundreds of copies of  
20 Oracle software per our customers contracts, yes.

21 Q. And that includes -- you wouldn't argue with me if I  
22 said almost all of your major customers have them.

23 A. Well, again, I don't know specifically whether IBM  
24 or AT&T had environments on our system. I'm not that close  
25 to it.

1 Q. All right. Did you ever look into it? Once you  
2 realized you had these environments that had copies of  
3 Oracle software and that this was going to be an issue in  
4 the case, did you, yourself, look into this?

5 A. Well, again, my belief was that we had every right  
6 to have the software on our system, so I wouldn't have --  
7 of course, I knew we had environments. There was, from my  
8 position, no problem with that.

9 Q. Well, but you haven't gone back to check what was  
10 going on with these environments; is that right?

11 A. Well, I know how we used the environments to provide  
12 support and to build tax, legal, and regulatory updates.  
13 So I didn't have any need to go back and do a personal  
14 line-by-line investigation for it.

15 Q. All right. Dr. Davis also talked about cross-use of  
16 fixes.

17 All right. You saw Dr. Davis testify about  
18 these. Have you looked into the accuracy of what he said,  
19 that all of these clients, these customers who were talked  
20 about in your opening statement, received cross-uses of  
21 fixes -- received cross-use fixes?

22 A. Well, again, I didn't do any line-by-line analysis.  
23 In fact, I'm not even sure I saw his report. It may have  
24 been attorney's fees only.

25 So I do know, of course, we were providing fixes

1 and updates to hundreds of clients, yes.

2 Q. Doesn't surprise you to see this, that you had  
3 all -- once you look at your major customers that were  
4 shown to the jury in opening statement, that they had these  
5 local environments with the Oracle copies and that they  
6 were receiving these cross-use of fixes?

7 A. No. I certainly know we have hundreds of clients,  
8 and we provide updates and fixes and support for hundreds  
9 of clients.

10 So, no, I'm not surprised we had lots of  
11 environments and lots of copies of Oracle product.

12 Q. Thank you.

13 All right. So let's go back to talking about  
14 the library.

15 MR. ISAACSON: The -- can we look at -- this has  
16 been preadmitted. So, Your Honor, it's been preadmitted,  
17 it's okay if I just directly put it on the screen?

18 THE COURT: Yes, I'll allow you to do that at  
19 this time.

20 (Plaintiffs' Exhibit 4 received into  
21 evidence.)

22 COURTROOM ADMINISTRATOR: What number is it?

23 MR. ISAACSON: PTX 4.

24 COURTROOM ADMINISTRATOR: Thank you.

25

1 BY MR. ISAACSON:

2 Q. And you can -- whatever is more comfortable for you,  
3 sir. You've got a binder, and it's also going to be shown  
4 on your screen.

5 A. Thank you. You said PTX 4.

6 Q. Let's look at the last page because sometimes you  
7 have to read e-mails backwards to get the chronology of  
8 what's going on.

9 All right. This is an e-mail to you from Dennis  
10 Chiu. It's addressed to you. "Hi, Seth."

11 Now, this is in 2006, June 2006. Your company's  
12 young. He's one of your handful of vice-presidents at this  
13 time; right?

14 A. Yes. I'm sorry. I'm just trying to find --

15 Q. PTX 4.

16 A. Yes. Okay. It's the first page. Yes.

17 Q. All right. Dennis Chiu, in June 2006, was one of  
18 your handful of vice-presidents at the time.

19 A. I think he may have been the only vice-president at  
20 the time.

21 Q. Okay. There was you, another founder, Mr. Shay, and  
22 then your vice-president, Mr. Chiu. That's basically the  
23 management structure at that time; is that right?

24 A. I think that was pretty much the whole company other  
25 than Susan Tahtaras referred to here.

1 Q. Okay. And, indeed, he's talking about "I had" -- at  
2 the top of the page, "I had a couple things in mind for  
3 Susan in terms of her getting ramped up."

4 So she's just coming to the company; right?

5 A. Yes.

6 Q. All right. And down below it says, "I also wanted  
7 to begin" -- "I also wanted to begin having her download  
8 all the PeopleSoft application software that is currently  
9 available on the Oracle website which would help with the  
10 software library we want to set up, and once we have all  
11 the software, have her begin installing some vanilla  
12 environments. The intent is to familiarize her with our  
13 lab process and infrastructure as well as having  
14 environments on hand when we confirm a PeopleSoft client."

15 So in June 2006, you were setting up a library  
16 with PeopleSoft application software; correct?

17 A. Well, come back to what I said earlier. This is the  
18 installation media which we're talking about downloading  
19 here, which is common across all of the PeopleSoft  
20 products.

21 Q. All right. You're saying it's common to have  
22 installation media.

23 And so the application software refers to  
24 installation media. We agree with that. You were setting  
25 up a software library of that; correct?

1       A.       Well, again, it's different. If you go back to what  
2       you alleged in the complaint, you talked about us doing  
3       something different.

4       Q.       You called it a software library; right?

5       A.       Yes -- I'm sorry, I didn't mean to talk over you.

6               We've talked about it, and you've seen in  
7       several documents and even in more, you'll find people use  
8       library in different ways.

9       Q.       Maybe you didn't hear my question. My question was,  
10      in your company, did you call it a software library?

11      A.       Yes, it was referred to as a software library.

12      Q.       And the people at your company when they wrote about  
13      it called it a software library; right?

14      A.       Different people did, yes.

15      Q.       All right. And they called it a software library  
16      when they wrote to you; right?

17      A.       Sometimes, depending on the installation media, yes.

18      Q.       And you never wrote back and said it's not a  
19      library?

20      A.       No, I didn't always correct them every time because  
21      people used library in different ways.

22      Q.       All right. And at this point you're setting up the  
23      PeopleSoft library with installation media, at least the  
24      installation media, so that you can do -- you can install  
25      some environments when you don't even have a PeopleSoft

1 client yet; correct?

2 A. Yes, that's what it says.

3 Q. Okay. And then on page 3 at the top you respond in  
4 the middle, "Dennis, sounds like a solid plan that should  
5 keep her very busy in the next week."

6 All right. You approved the setting up of this  
7 PeopleSoft library as recommended to you by Mr. Chiu;  
8 right?

9 A. Yes, for the installation media.

10 Q. Right.

11 All right. So now can we look at Exhibit 5,  
12 which is easy for you, because that's the next tab in your  
13 binder. It has been preadmitted, so let's put it on the  
14 screen.

15 (Plaintiffs' Exhibit 5 received into  
16 evidence.)

17 THE WITNESS: By the way, is my screen blurry or  
18 is it just my eyes? I can't really read it unless it blows  
19 up.

20 THE COURTROOM ADMINISTRATOR: It's blurry.

21 THE WITNESS: That's -- it is blurry, right?

22 MR. ISAACSON: All right. We will do our best  
23 to keep that in mind.

24 THE WITNESS: Really, I can't even read it.  
25 Unless you blow it up real big, I can't even read it.

1                   MR. ISAACSON: Yeah, actually it's a little  
2 blurry here too, so, yes.

3 BY MR. ISAACSON:

4       Q.       So now, on PTX 5 at page 2, Mr. Chiu is writing to  
5 you again, again in June 2006, and you see the part where  
6 it says, "I do have Susan gathering information regarding  
7 the PeopleSoft software"?

8       A.       Yes, I see it.

9       Q.       He says, "The software packages are pretty large  
10 because it bundles the applications." That's installation  
11 media; right?

12      A.       Yes.

13      Q.       PeopleTools, that's installation media; correct?

14      A.       Yes.

15      Q.       Kits. That's not installation media, is it? That's  
16 used for training.

17      A.       I'm not sure exactly what he's referring to, but I  
18 think that must be the training kits.

19      Q.       Right. So now the library's going to include the  
20 installation -- it's not -- it's going to include more than  
21 the installation media, it's going to include the kits;  
22 right?

23      A.       No, that's part of the installation media.

24      Q.       It's your testimony that the kits refers to  
25 installation media; is that right?



1 A. Yes.

2 Q. Okay. This is written to you, and you approve this  
3 continued action; right?

4 A. Yes. I don't remember whether it was done or not,  
5 but this is certainly from me.

6 Q. All right. Let's look at 167, which is preadmitted,  
7 it's in the same binder.

8 (Plaintiffs' Exhibit 167 received into  
9 evidence.)

10 THE WITNESS: Okay. Found it.

11 BY MR. ISAACSON:

12 Q. All right. And this is again -- this is some people  
13 in your company, this is -- now we've moved to March 2007.  
14 On page 2 of the document, Doug Baron, he's one of your  
15 executives -- one of your engineers; correct?

16 A. He's an engineer, right.

17 Q. And he's writing to you and Mr. Chiu as well as  
18 Mr. Lester, another executive; right?

19 A. Yes.

20 Q. And he's talking about loading things into the  
21 library that we've been discussing for PeopleSoft; right?

22 A. Yes, we're talking about the installation media,  
23 yes.

24 Q. All right. And he says, "George already grabbed all  
25 the PeopleTools updates for all releases a while back."

1                   Updates are not installation media, are they?

2       A.       Well, no, this is a -- PeopleSoft updates are  
3 actually PeopleTools are part of installation media.

4       Q.       I understand PeopleTools are, but once we get to  
5 updates, once we get to patches and updates, we're no  
6 longer talking about installation media, are we, sir?

7       A.       No. When you actually refer to PeopleTools, they  
8 can come as an 8.1, 8.2. They actually come with  
9 installation media.

10      Q.       I understand that, sir. PeopleTools come with  
11 installation media.

12                   But when you have an update for PeopleTools,  
13 okay, or when you have a patch for some other PeopleSoft  
14 software, you're not talking about installation media, are  
15 you?

16      A.       That's not true.

17      Q.       Okay. So is it your testimony that when you say  
18 installation media, you're including patches as well as  
19 updates?

20      A.       I didn't say patches, I said updates. That's what  
21 they're actually called, PeopleTools updates, but they're  
22 part of installation media.

23      Q.       Let me ask you about patches. Are patches  
24 installation media?

25      A.       Actually, not the individual patches I wouldn't

1 consider installation media unless they were included with  
2 the original documents.

3 MR. ISAACSON: All right. I promised Judge  
4 Hicks I would conclude at 10 till, so I'm concluding at 10  
5 till. We'll talk some more tomorrow.

6 THE COURT: Thank you, Mr. Isaacson.

7 Ladies and gentlemen, we will break at this time  
8 today.

9 We've indicated we would go until 2:00 or  
10 thereabouts. There may be other days when we can go a  
11 little later, other times when we may break a little  
12 before.

13 But I need to say a few words again about your  
14 conduct as jurors during this, our first recess.

15 Of course, I remind that you you're not to  
16 discuss this case with anyone or permit anyone to discuss  
17 it with you or in your presence.

18 I'm sure you've seen that you can talk to your  
19 fellow jurors about anything else, but don't talk about  
20 this case or anyone involved with this case.

21 I need to caution you too of the importance not  
22 to do any independent research or inquiry. I've talked  
23 about that before.

24 The theory of all of our cases is that a jury  
25 decides the case based on the evidence presented in the

1 courtroom that every one of you have seen. That's very  
2 important to remember at all times.

3 So please do not do any independent searches,  
4 Google searches, Internet searches, or anything of that  
5 nature, because that would be totally inappropriate.

6 Please keep an open mind until you've heard all  
7 the witnesses and seen all the evidence presented and then  
8 heard the Court's instructions on the law and the arguments  
9 of the attorneys which will be given at the end of the  
10 case.

11 And if you've taken any notes, please be careful  
12 to leave your notes in the jury room. They're protected  
13 there, and our janitorial staff knows nothing happens to  
14 them.

15 These admonishments, of course, are continuing  
16 admonishments that continue throughout the trial so if I  
17 forget to repeat them at some point in time when you break,  
18 I know you'll remember them.

19 We will start again tomorrow morning at 8:00  
20 a.m. And I appreciate everyone's arrival today. We were  
21 off to a good start, and I will certainly hope that that  
22 continues.

23 And as you can see, the attorneys and the  
24 witnesses and everyone else are ready to go, and if  
25 anyone's late it means that we have anywhere from 40, 50 or

1       60 people waiting. So I appreciate your timeliness.

2               So we'll take our break at this time. The Court  
3 will be in recess, and we'll reconvene in the morning, and  
4 I wish you a pleasant evening. Thank you.

5               THE WITNESS: Judge, I assume that I'm held  
6 over?

7               THE COURT: Yes.

8               THE WITNESS: So no talking to the lawyers?

9               THE COURT: But you may speak to your lawyers,  
10 yes.

11               (Jurors exit courtroom at 1:53 p.m.)

12               (The proceedings adjourned at 1:53 p.m.)

13                               \*    \*    \*

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I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.



9/16/15

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date

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19  
20  
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22  
23  
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I N D E X

Plaintiffs' WITNESSES:	PAGE
RANDALL DAVIS	
Direct Examination By Ms. Dunn	148
Cross-Examination By Mr. Reckers	220
Redirect Examination By Ms. Dunn	234
SETH RAVIN	
Direct Examination By Mr. Isaacson	240

E X H I B I T S

Plaintiffs'	ADMITTED
4	251
5	255
14	203
136	209
167	257
236	187
351	228
1475	243
1491A	196
3507	212
3510	172
5429	213
6000	180